

MONTANA LEGISLATIVE HISTORY

Chapter 387 19 75

Bill H _____ S 1

Original bill & history ☒ c

H. Committee on Business + Industry

Hearing Date(s) Mar 05 ☒ c

Mar 14 ☒ c

Mar 17 ☒ c

_____ c

Date Out _____ c

S. Committee on Business + Industry

Hearing Date(s) Jan 13 ☒ c

Jan 18 ☒ c

Jan 22 ☒ c

_____ c

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Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

SENATE BILL NO. 1INTRODUCED BY TURNAGE, REGAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO RECODIFY AND GENERALLY REVISE THE ALCOHOLIC BEVERAGE CONTROL LAWS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 4-101, R.C.M. 1947, is renumbered section 4-1-101, and is amended to read as follows:

"~~4-101~~ 4-1-101. Citation of State Liquor Control Act-- declaration of policy--subject matters of regulation under act. This act title may be cited as the "State Liquor Control Act of Montana" "Montana Alcoholic Beverage Code". It is hereby declared to be the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale and distribution of liquor within the state of Montana as that term is defined in this code in section 4-102, Revised Codes of Montana, 1947, as amended by chapter--209, laws of the thirty-first legislative assembly of Montana, in and subject to, the authority of the state of Montana through the Montana liquor--control--board department of revenue, in accordance with the provisions of the State Liquor Control Act of Montana (Title 4, chapter 1, sections--4-101--through--4-171, inclusive, Revised Codes of Montana, 1947, as amended or supplemented) and in accordance

with the provisions of the Retail Liquor License Act--(Title 4, chapter--4, sections--4-401--through--4-441, inclusive, Revised Codes of Montana, 1947, as amended or supplemented).

It is hereby declared to be the policy of the state of Montana--to--effectuate--and--ensure--that--the--control--and--regulation--by--the--state--of--Montana--of--the--manufacture,--sale--and--distribution--of--beer,--as--that--term--is--defined--in--the--Montana--Beer--Act--(Title 4, chapter 3, sections 4-301 through 4-356, inclusive, Revised Codes of Montana, 1947, as amended or supplemented)--and--regulated--thereby,--and--containing--four--per--centum--(4)--of--alcohol--by--weight--or--less,--and--the--incidents--of--such--manufacture,--sale--and--distribution--of--such--beer,--shall--continue--subject--to,--and--be--effectuated--exclusively--under,--the--provisions--of--the--Montana--Beer--Act,--as--amended--or--supplemented,--and--not--under--the--provisions--of--the--State--Liquor--Control--Act--of--Montana. The terms "beer" and "malt liquor" whenever used as a subject--of--regulation and--control--by--and--under--the--state--liquor--control--act--of--Montana--shall--refer--to,--and--be--construed--as--applicable--only--to,--beer,--ale,--porter,--stout--or--other--malt--liquors--containing--more--than--four--per--centum--(4)--of--alcohol--by--weight,--and--such--beer,--ale,--porter,--stout--and--malt--liquors--containing--more--than--four--per--centum--(4)--of--alcohol--by--weight,--are--hereby--classified--and--defined--as--"liquor"--and--shall--be--subject--to--regulation--and--control--under--the--terms

of--the--State--Liquor--Control--Act--of--Montana--as--amended--or
 supplemented,--and--not--under--the--provisions--of--the--Montana
 Beer--Act,--as--amended--or--supplemented,--The--said--acts--herein
 referred--to--shall--be--deemed This code is an exercise of the
 police power of the state, in, and for the protection, of
 the welfare, health, peace, morals and safety of the people
 of the state and their provisions shall be construed for the
 accomplishment of such purposes."

Section 2. Section 4-103, R.C.M. 1947, is renumbered
 section 4-1-105, and is amended to read as follows:

"~~4-103~~ 4-1-105. Divisions of act code. This act code
 is divided into six parts chapters. Part-II Chapter 1
 relates to the creation--of--a--board authority of the
department of revenue to administer this act and the powers
 and functions of the board department. Part-III Chapter 2
 relates to the establishment of state stores and the keeping
 and selling of liquors. Part-III Chapter 3 relates to the
formation--of--"local--option--areas"--and--the--holding--of
election--therein control of liquor, wine, and beer. Part
IV Chapter 4 relates to prohibitions,--interdiction,
penalties--and--procedure--on--prosecution--and--on--appeal license
administration. Part--V Chapter 5 relates to property
acquired--by--the--board,--and--the--financing--and--accounting--by
the--board--and--application--of--the--profits identification
cards. Part--VI Chapter 6 relates to general--and

miscellaneous--matters enforcement."

Section 3. Section 4-107, R.C.M. 1947, is renumbered
 section 4-1-301, and is amended to read as follows:

"~~4-107~~ 4-1-301. General powers and duties of the board
department. The board department of revenue shall have the
 powers and duties herein--specified--and--the--administration--of
to administer the State--Liquor--Control--Act--of Montana and
 the Montana--Beer--Code Alcoholic Beverage Code, including the
 general control, management and supervision of all state
 liquor stores, but--the--board--is--authorized--to--delegate--to
the--state--liquor--administrator--the--general--control,
management--and--supervision--of--all--state--liquor--stores,
including--the--power--to--purchase--supplies--for--same--and--the
power--to--hire--and--discharge--employees--of--the--board,--subject,
however,--to--such--regulations--and--restrictions--as--the--board
may--impose--upon--the--state--liquor--administrator."

Section 4. Section 4-109, R.C.M. 1947, is renumbered
 section 4-1-307, and is amended to read as follows:

"~~4-109~~ 4-1-307. Principal office of board department
of revenue. The principal office of the board department of
revenue shall be in the city of Helena."

Section 5. Section 4-112, R.C.M. 1947, is renumbered
 section 4-1-302, and is amended to read as follows:

"~~4-112~~ 4-1-302. Functions, powers and duties of board
department of revenue. The board department of revenue shall

1 have the following functions, duties and powers:

2 (a) To buy, import, and have in its possession for
3 sale, and sell, liquors, in the manner set forth in this act
4 code;

5 (b) To control the possession, sale and delivery of
6 liquors in accordance with the provisions of this act code;

7 (c) To determine the municipalities within which state
8 liquor stores shall be established throughout the state, and
9 the situation of the stores within every such municipality;

10 (d) To lease, furnish and equip any building or land
11 required for the operation of this act code;

12 (e) To buy or lease all plant and equipment it may
13 consider necessary and useful in carrying into effect the
14 objects and purposes of this act code;

15 (f) To ~~appoint-venders~~ employ store managers, and also
16 every officer, ~~inspector~~ investigator, clerk or other
17 employee, required for the operation or carrying out of this
18 act code, and to dismiss the same, fix their salaries or
19 remuneration, assign them their title, define their
20 respective duties and powers, and to engage the service of
21 experts and persons engaged in the practice of a profession,
22 if deemed expedient;

23 (g) To determine the nature, form and capacity of all
24 packages to be used for containing liquor kept or sold under
25 this act code; ~~provided--that--all--spiriteous--and--vinous~~

1 ~~liquors---shall--be--purchased--and--sold--only--in--bottled~~
2 ~~containers-in-the-original-packages,--and--not--in--barrels--or~~
3 ~~bulky--it-being-the-intent-and-purpose-of-this-act-to-prevent~~
4 ~~the-rectification-or-dilution-of-such-liquors,~~

5 (h) To grant and issue licenses under and in pursuance
6 to this act code;

7 (i) Without in any way limiting, or being limited by
8 the foregoing, to do all such things as are deemed necessary
9 or advisable by the board department for the purpose of
10 carrying into effect the provisions of this act code, or the
11 regulations made thereunder."

12 Section 6. Section 4-113, R.C.M. 1947, is renumbered
13 section 4-1-303, and is amended to read as follows:

14 "4-113 4-1-303. Regulations may be made by board
15 department of revenue--scope of regulations. (1) The board
16 department of revenue may make such regulations, not
17 inconsistent with this act code, as to the board department
18 of revenue seem necessary, for carrying out the provisions
19 of this act code, and for the efficient administration
20 thereof.

21 (2) Without thereby limiting the generality of the
22 provisions contained in subsection (1) hereof, it is
23 declared the power of the board department to make
24 regulations in the manner set out in that subsection shall
25 extend to and include the following:

1 (a) Regulating the equipment and management of state
2 stores and warehouses in which liquor is kept or sold and
3 prescribing the books and records to be kept therein;

4 (b) Prescribing the duties of the ~~officers, clerks and~~
5 ~~servants~~ employees of the ~~board~~ liquor division, and
6 regulating their conduct while in the discharge of their
7 duties;

8 (c) Governing the purchase of liquor and the
9 furnishing of liquor to state stores established under this
10 act code;

11 (d) Determining the classes, varieties and brands of
12 liquor to be kept for sale at any state store;

13 (e) Prescribing, subject to this act code, the days
14 and hours during which state liquor stores ~~and--hotels~~, and
15 ~~clubs~~ retail establishments ~~licensed-to-sell-beer-under-this~~
16 act shall be kept open for the sale of ~~liquor~~ alcoholic
17 beverages;

18 (f) Providing for the issuing and distributing of
19 price lists showing the price to be paid by purchasers for
20 each class, variety or brand of liquor kept for sale under
21 this act code;

22 (g) Prescribing an official ~~serially--numbered~~ seal
23 which shall be attached to every package of liquor sold or
24 sealed under this act code;

25 (h) Prescribing forms to be used for the purpose of

1 this act code or of the regulations made thereunder, and the
2 terms and conditions in permits and licenses issued and
3 granted under this act code;

4 ~~{i}--Prescribing--the--kinds--and--quantities-of-liquor~~
5 ~~which-may-be-purchased-under-permits-of-any-class,-including~~
6 ~~the-quantity-which-may-be--purchased--at--any--one--time--or~~
7 ~~within-any-specified-period-of-time;~~

8 ~~{j}~~ (i) Prescribing the form of records of purchase of
9 liquor, and the reports to be made thereon to the board, and
10 providing for inspection of the records so kept;

11 ~~{k}~~ (j) Prescribing the manner of giving and serving
12 notices required by this act code or the regulations
13 thereunder;

14 ~~{i}~~ (k) Prescribing the fees payable in respect of
15 permits and licenses issued under this act code for which no
16 fees are prescribed in this act code, and prescribing the
17 fees for anything done or permitted to be done under the
18 regulations made thereunder;

19 ~~{m}--Prescribing,-subject-to--the--provisions--of--this~~
20 ~~act,-any-advertisement-of-the-application,-if-required-by~~
21 ~~the-board-and-the-conditions--and--qualifications--necessary~~
22 ~~for-the-obtaining-of-club-licenses-and-the-books-and-records~~
23 ~~to--be--kept--and--the--returns-to-be-made-by-clubs,-and-the~~
24 ~~number-of-licensed-clubs-in-any-municipality,-and--providing~~
25 ~~for-the-inspection-of-clubs;~~

1 ~~(n)~~ (1) Prescribing, subject to the provisions of this
2 ~~act code~~, the conditions and qualifications necessary for
3 the obtaining of a liquor or beer license, and the books and
4 records to be kept and the returns to be made by the
5 licensees and ~~the--number-of-such-licensed-premises-in-any~~
6 ~~municipality--and~~ providing for the inspection of such
7 licensed premises;

8 ~~(e)~~ (m) Specifying and describing the place and the
9 manner in which liquor or beer may be lawfully kept or
10 stored;

11 ~~(p)~~ (n) Specifying and regulating the time and periods
12 when, and the manner, methods and means by which, vendors
13 and brewers shall deliver liquor under this ~~act code~~, and
14 the time and periods when, and the manner, methods and means
15 by which liquor, under this ~~act code~~, may be lawfully
16 conveyed or carried;

17 ~~(q)~~ (o) Governing the conduct, management and
18 equipment of any premises licensed to sell liquor or beer
19 under this ~~act code~~;

20 ~~(r)--Subject--to--this--act--to--make--regulations~~
21 ~~respecting--the--sale--and--consumption--of--beer--in--a--club,~~
22 ~~holding-a-club-license,~~

23 ~~(s)~~ (p) Providing for the imposition and collection of
24 ~~the-tax-to-be--collected--or--levied--under--section--4-147~~
25 ~~4-317},~~ taxes and making regulations respecting returns, to

1 ~~be--made--by--a--brewery--and--respecting--the~~ accounting and
2 ~~payment--by--a--brewer~~ to the ~~board,~~ department of revenue of
3 the ~~tax,~~ taxes ~~to--be-collected-by-him-under-said-section~~
4 ~~4-147-(4-317).~~

5 (3) Whenever it is provided in this ~~act code~~ that any
6 act, matter or thing, may be done, if permitted or
7 authorized by the regulations, or may be done in accordance
8 with the regulations or as provided by the regulations, the
9 ~~board~~ department of revenue, subject to the restrictions set
10 out in subsection (1) hereof, shall have the power to make
11 regulations respecting such act, matter or thing."

12 Section 7. Section 4-114, R.C.M. 1947, is renumbered
13 section 4-2-101, and is amended to read as follows:

14 "4-114 4-2-101. Establishment of state liquor stores--
15 hours--kinds and prices of liquor. The ~~board~~ department of
16 revenue shall establish and maintain at the county seats and
17 such other places as the ~~board~~ department deems advisable,
18 one or more stores to be known as "state liquor stores," for
19 the sale of liquor in accordance with the provisions of this
20 ~~act code~~ and the regulations made thereunder; the stores
21 shall be classified according to the volume of business
22 which each store does each fiscal year; the volume of
23 business to be used in figuring each store's classification
24 shall be the volume of business done by the store to be
25 classified during the immediate past fiscal year; stores

1 shall be classified as follows: stores having done a
 2 business of four hundred and fifty thousand dollars
 3 (\$450,000) or over during the immediate past fiscal year
 4 shall be "Class A" stores; stores having done a business of
 5 one hundred and forty thousand dollars (\$140,000) and up to
 6 four hundred and fifty thousand dollars (\$450,000) during
 7 the immediate past fiscal year shall be "Class B" stores;
 8 and all stores having done a business of less than one
 9 hundred and forty thousand dollars (\$140,000) during the
 10 immediate past fiscal year shall be "Class C" stores; in
 11 opening new stores the board department shall estimate the
 12 volume of business which said store will do the first year
 13 and classify said store according to the estimate of
 14 business; the board department shall contract or employ the
 15 necessary help to operate said stores and shall designate
 16 the duties to be performed by the agent or employees; the
 17 board department may, from time to time, fix the prices at
 18 which the various classes, varieties and brands of liquor
 19 may be sold, and prices shall be the same at all state
 20 stores. Such state liquor stores shall be and remain open
 21 during such period of the day as the board department shall
 22 deem advisable, provided, however, that such stores shall be
 23 closed for the transaction of business between the close of
 24 normal business Saturday p.m. through up to the opening of
 25 normal business Tuesday a.m. as set by board department

1 regulation and including legal holidays ~~and election--days.~~"
 2 Section 8. Section 4-116, R.C.M. 1947, is renumbered
 3 section 4-2-106, and is amended to read as follows:
 4 "~~4-116~~ 4-2-106. Provisions concerning sale of liquor
 5 ~~and--beer-by-venders.~~ A vender store manager may sell to any
 6 person such liquor as that person is entitled to purchase in
 7 conformity with the provisions of this act code and the
 8 regulations made thereunder, provided that no delivery shall
 9 take place until the purchaser has paid the purchase price."
 10 Section 9. Section 4-117, R.C.M. 1947, is renumbered
 11 section 4-2-201, and is amended to read as follows:
 12 "~~4-117~~ 4-2-201. No reduction for quantity sales of
 13 liquor. No reductions shall be made by the ~~Montana-liquor~~
 14 ~~control-board~~ department for sales of liquor in quantity."
 15 Section 10. Section 4-120, R.C.M. 1947, is renumbered
 16 section 4-2-107, and is amended to read as follows:
 17 "~~4-120~~ 4-2-107. Liquor not to be consumed on premises
 18 of state store. No officer, clerk or servant of the board
 19 department, employed in the state store, shall allow any
 20 liquor to be consumed on the premises of a state store, nor
 21 shall any person consume any liquor on such premises."
 22 Section 11. Section 4-121, R.C.M. 1947, is renumbered
 23 section 4-2-104, and is amended to read as follows:
 24 "~~4-121~~ 4-2-104. When sales of liquor forbidden. No
 25 sale or delivery of liquor shall be made on or from the

1 premises of any state liquor store, nor shall any store be
2 open for the sale of liquor

3 (a) on any holiday recognized by state law;

4 ~~{b}--on--any--day--on--which--polling--takes--place--at--any~~
5 ~~national--or--state--election--held--in--the--electoral--district--in~~
6 ~~which--the--store--is--situated,~~

7 ~~{c}--on--any--day--on--which--polling--takes--place--at--any~~
8 ~~municipal--election--held--in--the--municipality--in--which--the~~
9 ~~store--is--situated,~~

10 ~~{d}~~ (b) during such other period and on such other days
11 as the board department may direct."

12 Section 12. Section 4-122, R.C.M. 1947, is renumbered
13 section 4-2-103, and is amended to read as follows:

14 "4-122 4-2-103. Conveyance of liquors--opening liquor
15 during transit forbidden. It shall be lawful to carry or
16 convey liquor to any state store, and to and from any
17 warehouse or depot established by the board department for
18 the purposes of this act code, and when permitted so to do
19 by this act code and the regulations made thereunder, and in
20 accordance therewith, it shall be lawful for any common
21 carrier, or other person, to carry or convey liquor sold by
22 a vendor from a state store, or beer, when lawfully sold by
23 a brewer, from the premises wherein such beer was
24 manufactured, or from premises where the beer may be
25 lawfully kept and sold, to any place to which the same may

1 be lawfully delivered under this act code, and the
2 regulations made thereunder;

3 Provided that no such common carrier or any other
4 person, shall open, or break, or allow to be opened or
5 broken, any package or vessel containing liquor, or drink or
6 use, or allow to be drunk or used, any liquor therefrom,
7 while being so carried or conveyed."

8 Section 13. Section 4-139, R.C.M. 1947, is renumbered
9 section 4-1-205, and is amended to read as follows:

10 "4-139 4-1-205. Hospitals---and---sanitariums Licensed
11 hospital or health care facility -- restrictions --
12 violations. Any person in charge of an institution regularly
13 conducted as a hospital--or--sanitarium--for--the--care--of
14 persons--in--ill--health,--or--as--a--home--devoted--exclusively--to
15 the--care--of--aged--people licensed hospital or health care
16 facility, may administer liquor purchased by him to any
17 patient or inmate of the institution who--is--in--need--of--the
18 same,--either--by--way--of--external--application--or--otherwise--for
19 emergency--medical--purposes, and may charge for the liquor so
20 administered; but no liquor shall be administered by any
21 person under this section except to bona fide patients or
22 inmates of the institution of which he is in charge and--in
23 cases--of--actual--need, and every person in charge of an
24 institution who administers liquor in evasion or violation
25 of this act code shall be guilty of an offense against this

1 act code."

2 Section 14. Section 4-140, R.C.M. 1947, is renumbered
3 section 4-1-202, and is amended to read as follows:

4 "~~4-140~~ 4-1-202. Application of act code. (1) Nothing
5 in this act code shall prevent any brewer, distiller, or
6 other person duly licensed, under the provisions of any
7 statute of the United States of America, for the manufacture
8 of liquor, from having or keeping liquor in a place and in
9 the manner authorized by or under any such statute.

10 It is hereby declared to be the policy of the state of
11 Montana that the manufacture of liquor including the
12 distillation, rectification, bottling and processing as
13 these terms are defined under the provisions of the laws of
14 the United States shall be authorized and permitted by any
15 brewer, distiller, rectifier or other person duly licensed
16 under any provision of any statute of the United States of
17 America in a place and in the manner authorized by or under
18 any statute of the United States provided the Montana state
19 ~~liquor--control--board~~ department of revenue may make such
20 regulations as the ~~board--deem~~ department deems necessary
21 with respect thereto, not inconsistent with this act code,
22 or with the statutes of the United States of America or
23 regulations issued under the provisions of the federal
24 Alcohol Administration Act, title 27, United States Code
25 sections 201 through 212 inclusive or regulations issued

1 under the provisions of the Internal Revenue Code, title 26,
2 United States Code, sections 5001 through ~~section~~ 5693,
3 inclusive.

4 (2) Nothing in this act code shall prevent--

5 (a) The sale of liquor by any person to the ~~board~~
6 department;

7 (b) The purchase, importation and sale of liquor by
8 the ~~board~~ department for the purposes of and in accordance
9 with this act code."

10 Section 15. Section 4-141, R.C.M. 1947, is renumbered
11 section 4-1-203, and is amended to read as follows:

12 "~~4-141~~ 4-1-203. Preparations not subject to act code.

13 (1) Subject to the provisions of this section, nothing in
14 this act code shall, by reason only that such preparation
15 contains alcohol, prevent the manufacture, sale, purchase or
16 consumption--

17 (a) of any extract, essence or tincture or other
18 preparation containing alcohol, which is prepared according
19 to a formula of the United States Pharmacopoeia, or
20 according to a formula approved of by the ~~board~~ department;
21 or

22 (b) of any proprietary or patent medicine prepared
23 according to a formula approved of by the ~~board~~ department.

24 (2) The ~~board~~ department, if of opinion that any such
25 proprietary or patent medicine, extract, essence, tincture

1 or preparation which contains alcohol, or any other
 2 preparation of a solid, semisolid or liquid nature
 3 containing alcohol which, or any extract from which, can be
 4 used as a beverage or as the ingredient of any beverage, may
 5 prohibit the sale thereof by retail within the state, or the
 6 possession of the same for sale by retail within the state,
 7 except by a state liquor store, or by persons duly licensed
 8 by the board department to keep and sell the same by retail
 9 in accordance with this act and the regulations made
 10 thereunder.

11 (3) The board department shall notify the manufacturer
 12 or vendor of such proprietary or patent medicine, extract,
 13 essence, tincture or preparation, of the said prohibition
 14 and from and after the date of such notification any person
 15 within the state selling or keeping for sale any such
 16 proprietary or patent medicine, extract, essence, tincture
 17 or preparation so prohibited as aforesaid shall be guilty of
 18 an offense under this act code."

19 Section 16. Section 4-150, R.C.M. 1947, is renumbered
 20 section 4-1-201, and is amended to read as follows:

21 "4-150 4-1-201. Sale of liquor, unlawful
 22 when--foreign-substance-in-liquor--forbidden--possession of
 23 liquor, when unlawful. (1) Except as provided by this act
 24 code, no person shall, within the state, by himself, his
 25 clerk, servant, or agent, expose or keep for sale, or

1 directly or indirectly or upon any pretense, or upon any
 2 device, sell, or offer to sell, or in consideration of the
 3 purchase or transfer of any property, or for any other
 4 consideration, or at the time of the transfer of any
 5 property, give to any other person any liquor.

6 ~~(2)--No person shall have, keep or--sell--any--beer--or~~
 7 ~~wait--liquor,--to which has been added any foreign substance~~

8 ~~(3)~~ (2) No person shall have or keep any liquor within
 9 the state which has not been purchased from a the state
 10 vendor of the Montana liquor control--board--or--from a

11 ~~druggist--authorized to sell--the--same; provided, however,~~
 12 that nothing in this act code shall prohibit any person
 13 entering this state from any other state, or from any
 14 foreign country, from having in his possession not to exceed
 15 ~~one--(1)~~ three (3) wine gallon gallons of alcoholic liquor or
 16 beer, which liquor or beer shall have been purchased in
 17 another state or foreign country but no person claiming to
 18 have so entered the state, shall at any time, have in his
 19 possession more than ~~one--(1)~~ three (3) wine gallon gallons
 20 of intoxicating liquor which shall not have been purchased
 21 from a state liquor store. This subsection shall not apply
 22 to the board department or to the keeping or having of
 23 liquor by brewers, distillers and other persons duly
 24 licensed by the United States for the manufacture of such
 25 liquor; nor to the keeping or having of any proprietary or

1 patent medicines or of any extracts, essences, tinctures or
2 preparations where such having and keeping is authorized by
3 this aet code.

4 ~~(4)~~ (3) Nothing contained in this section shall apply
5 to the possession by a sheriff or his bailiff of liquor
6 seized under execution or other judicial or extra-judicial
7 process nor to sales under executions or other judicial or
8 extra-judicial process to the board department, or in the
9 case of beer to a brewer, beer licensee, club licensee or
10 canteen licensee."

11 Section 17. Section 4-152, R.C.M. 1947, is renumbered
12 section 4-2-105, and is amended to read as follows:

13 "~~4-152~~ 4-2-105. Place and time of selling liquor. No
14 ~~vender~~ store manager, and no person acting as the clerk or
15 servant of or in any capacity for any ~~vender~~ manager, shall
16 sell liquor in any other place or at any other time or
17 otherwise than as authorized by this aet code and the
18 regulations."

19 Section 18. Section 4-153, R.C.M. 1947, is renumbered
20 section 4-1-304, and is amended to read as follows:

21 "~~4-153~~ 4-1-304. ~~Board---members~~ Liquor division
22 employees not to be interested in liquor sales--unlawful to
23 give or receive gift, commission or remuneration. (1) No
24 member officer or employee of the board liquor division
25 shall be directly or indirectly interested or engaged in any

1 other business or undertaking dealing in liquor, whether as
2 owner, part owner, partner, member of syndicate,
3 shareholder, agent or employee, and whether for his own
4 benefit or in a fiduciary capacity for some other person.

5 (2) No member or employee of the board division or any
6 employee of the state shall solicit or receive directly or
7 indirectly any commission, remuneration or gift whatsoever
8 from any person or corporation having sold, selling or
9 offering liquor for sale to the state or board division in
10 pursuance of this aet code.

11 (3) No person selling or offering for sale to, or
12 purchasing liquor from, the state ~~or--the--board~~ liquor
13 division, shall either directly or indirectly offer to pay
14 any commission, profit or remuneration, or make any gift to
15 any member or employee of the board division or to any
16 employee of the state, or to anyone on behalf of such member
17 or employee.

18 (4) The prohibition contained in subsection (3) of this
19 section does not prohibit the board division from receiving
20 samples of liquor for the purpose of chemical testing,
21 subject to the following limitations:

22 (a) Each manufacturer, distiller, compounder,
23 rectifier, importer, or wholesale distributor, or any other
24 person, firm, or corporation proposing to sell any
25 spirituous liquors to the Montana liquor ~~control--board~~

division shall submit, without cost to the board division prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding twenty-five (25) fluid ounces of such merchandise to the board.

(b) It shall be the duty of the board division, when a brand of liquor has been accepted for testing by the board division, to forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The board division shall maintain written records of all samples received; such records shall show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the board's division's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) No liquor, wine, or other spirituous beverage shall be withdrawn from the regular warehouse inventory or from the state liquor stores of the Montana liquor ~~control~~ board division, for any purpose whatsoever other than by sale at the prevailing state retail prices, or for destroying damaged or defective merchandise. The board division shall maintain a written record including the type, brand, and container size; number of bottles or other units; signatures of witnesses; and method of destruction or other disposition of damaged or defective warehouse or state store

merchandise."

Section 19. Section 4-154, R.C.M. 1947, is renumbered section 4-6-101, and is amended to read as follows:

"~~4-154~~ 4-6-101. Transfer of ~~liquor~~ alcoholic beverages except as provided by act code unlawful. Except as provided in this act code, no person shall, within the state, by himself, his clerk, servant, or agent, attempt to purchase, or directly or indirectly or upon any pretense or upon any device, purchase, or in consideration of the sale or transfer of any property, or for any other consideration, or at the time of the transfer of any property, take or accept from any other person any ~~liquor~~ alcoholic beverage."

Section 20. Section 4-156, R.C.M. 1947, is renumbered section 4-6-106, and is amended to read as follows:

"~~4-156~~ 4-6-106. Consumption of ~~liquor~~ alcoholic beverage on druggists' premises prohibited. No person, within the state of Montana, shall consume any ~~liquor~~ alcoholic beverage on any premises where ~~liquor~~ an alcoholic beverage is kept for sale by a druggist, nor shall any druggist permit any ~~liquor~~ alcoholic beverage to be consumed on such premises."

Section 21. Section 4-158, R.C.M. 1947, is renumbered section 4-3-102, and is amended to read as follows:

"~~4-158~~ 4-3-102. Liquor container must have been sealed with official seal--~~powers--and--duties-of-peace-officers~~."

1 ~~{1}~~ Except in the case of--

2 (a) liquor imported by the state, or by the ~~board~~
3 department; or

4 (b) liquor had and kept by a person, and in a place and
5 manner referred to in section 4-~~140~~ 4-1-202; or

6 (c) beer and malt liquor, lawfully had or kept under
7 this act code; or

8 (d) any liquor kept for sale by a druggist under
9 ~~section--4-134~~ this code no liquor shall be kept or had by
10 any person within the state unless the package, not
11 including a decanter or other receptacle containing the
12 liquor for immediate consumption, in which the liquor is
13 contained has, while containing that liquor, been sealed
14 with the official seal prescribed under this act code.

15 ~~{2}--Any-inspector-or-peace-officer-who--finds--liquor,~~
16 ~~which--he--has-reasonable-cause-to-believe-is-had-or-kept-by~~
17 ~~any-person-in-violation-of-the-provisions-of-this--act--may~~
18 ~~without-warrant,-forthwith-seize-and-remove-the-same-and-the~~
19 ~~packages-in-which-the-liquor-is-kept,-and-upon-conviction-of~~
20 ~~the--person-for-a-violation-of-any-provision-of-this-section~~
21 ~~the-liquor-and-all-packages-containing-the--same--shall--in~~
22 ~~addition--to--any-other-penalty-prescribed-by-this-act,-ipso~~
23 ~~facto-be-forfeited-to-the-state-of-Montana."~~

24 Section 22. There is a new section to be numbered
25 4-6-205, R.C.M. 1947, which reads as follows:

1 4-6-205. Unlawful alcoholic beverage -- seizure --
2 forfeiture. Any investigator or peace officer who finds an
3 alcoholic beverage, which he has reasonable cause to believe
4 is had or kept by any person in violation of the provisions
5 of this code, may forthwith seize and remove the same and
6 the packages in which the alcoholic beverage is kept, and
7 upon conviction of the person for a violation of any
8 provision of this section the alcoholic beverage and all
9 packages containing the same shall, in addition to any other
10 penalty prescribed by this code, ipso facto be forfeited to
11 the state of Montana.

12 Section 23. Section 4-160, R.C.M. 1947, is renumbered
13 section 4-6-103, and is amended to read as follows:

14 "~~4-160~~ 4-6-103. Sales-to-intoxicated-persons Providing
15 alcoholic beverage prohibited. (1) No vender store manager,
16 beer retail licensee, ~~or-club-licensee~~, nor any employee of
17 a vender store manager, beer or retail licensee, ~~or-club~~
18 licensee, shall may sell any liquor alcoholic beverage, or
19 permit any liquor alcoholic beverage to be sold, to any
20 person apparently under the influence of liquor an alcoholic
21 beverage.

22 (2) No person may give an alcoholic beverage to a
23 person apparently under the influence of alcohol."

24 Section 24. Section 4-161, R.C.M. 1947, is renumbered
25 section 4-6-104, and is amended to read as follows:

"~~4-161~~ 4-6-104. Age limit for sale of ~~liquor~~ alcoholic beverages. Except in the case of ~~liquor~~ an alcoholic beverage given to a person under the age of eighteen (18) years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply ~~liquor~~ an alcoholic beverage to any person under the age of eighteen (18) years, or permit any person under that age to consume ~~liquor~~ an alcoholic beverage."

Section 25. Section 4-203, R.C.M. 1947, is renumbered section 4-6-203, and is amended to read as follows:

"~~4-203~~ 4-6-203. Search warrants--issuance. ~~(1)~~ Upon information on oath by any ~~inspector~~ investigator appointed under this act code or by any peace officer showing reasonable cause to believe that ~~liquor--is~~ alcoholic beverages are unlawfully kept or had, or kept or had for unlawful purposes, in any building or premises, it shall be lawful for any justice court by warrant under--~~its--hand~~ to authorize and empower the ~~inspector~~ investigator or peace officer, or any other person named therein, to enter and search the building or premises and every part thereof; and for that purpose to break open any door, lock, or fastening of the building or premises or any part thereof, or any

closet, cupboard, box, or other receptacle therein which might contain ~~liquor~~ alcoholic beverages."

Section 26. Section 4-209, R.C.M. 1947, is renumbered section 4-6-207, and is amended to read as follows:

"~~4-209~~ 4-6-207. Seizure of ~~liquor~~ alcoholic beverage and conveyance--forfeiture of conveyance and ~~liquor~~ alcoholic beverage to state. Whenever an ~~inspector--of~~ investigator or any peace officer in making or attempting to make a search under and in pursuance of authority of law, shall find in any motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance of any description ~~liquor~~ an alcoholic beverage which is unlawfully kept or had, or kept or held for unlawful purposes contrary to the provisions of this act code, he may forthwith seize the ~~liquor~~ alcoholic beverage and packages in which the same is contained, and the motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance in which ~~such--liquor~~ the alcoholic beverage is found; and upon the conviction of the occupant or person in charge of the vehicle, motor car, automobile, vessel, boat, canoe or conveyance, or of any other person, for having or keeping such ~~liquors~~ alcoholic beverages contrary to any of the provisions of this act code in any such vehicle, motor car, automobile, vessel, boat, canoe or conveyance, the court in which the conviction of any such person is had may, in addition to the sentence

imposed under authority of law, declare the liquor alcoholic beverage or any part thereof so seized, and the package in which the same is contained, to be forfeited to the state of Montana; and the court may in and by decree, further declare the vehicle, motor car, automobile, vessel, boat, canoe or conveyance so seized to be forfeited to the state of Montana."

Section 27. Section 4-210, R.C.M. 1947, is renumbered section 4-6-208, and is amended to read as follows:

"~~4-210~~ 4-6-208. Force may be used in seizure of liquor alcoholic beverages, when--retention of seized liquor alcoholic beverage--forfeiture--hearing. (1) Where liquor alcoholic beverage is found by any inspector investigator or peace officer on any premises or in any place in such quantities as to satisfy the inspector investigator or peace officer that such liquor alcoholic beverage is being had or kept contrary to any of the provisions of this act code, it shall be lawful for the inspector investigator or peace officer to forthwith seize and remove, by force if necessary, any liquor alcoholic beverage so found, and the packages in which the liquor alcoholic beverage was had or kept and immediately turn said liquor alcoholic beverage over to the Montana liquor--control--board department of revenue.

(2) The Montana liquor--control--board department of

revenue shall commence an action in the district court of the county in which the liquor alcoholic beverage is found and seized against said liquor alcoholic beverage and the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure. The ~~said-liquor~~ alcoholic beverage shall be named as one of the defendants to said action.

(3) The complaint shall show the date and place of seizure, the name of the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure, the reasons the Montana liquor--control--board department of revenue claims the right to the possession of ~~said--liquor~~ the alcoholic beverage and shall demand that all persons who claim any right to the possession of ~~said--liquor~~ the alcoholic beverage shall show the nature of their claim or claims and that the court declare ~~said-liquor~~ the alcoholic beverage contraband and that the court order ~~said-liquor~~ alcoholic beverage be forfeited to the state of Montana.

(4) Summons shall be issued, served or published as in other civil actions provided by Title 93, except that the summons shall be published in the county where ~~said--liquor~~ the alcoholic beverage was seized if a newspaper is published in said county.

(5) In all actions brought under this act code, proof

of the absence of the official seal of the Montana ~~liquor~~
~~control--board~~ department of revenue upon the bottle, jug,
 package, container or containers of ~~such-liquor~~ an alcoholic
beverage on which a seal is required shall be prima facie
 evidence that ~~said-liquor~~ the alcoholic beverage is
 contraband liquor and prima facie evidence of unlawful
 possession thereof in the defendants and each of them and in
 all other persons excepting the Montana ~~liquor-control-board~~
department of revenue, and the court shall order all such
~~liquor alcoholic beverage~~ contraband and forfeited to the
 state of Montana."

Section 28. Section 4-211, R.C.M. 1947, is renumbered
 section 4-6-209, and is amended to read as follows:

"~~4-211~~ 4-6-209. Disposal of forfeited ~~liquor~~ alcoholic
beverage--report by officers of seizure. (1) In every case
 in which a court makes any order for the forfeiture of
~~liquor alcoholic beverages~~ under any of the provisions of
 this act, and in every case in which any claimant to ~~liquor~~
an alcoholic beverage under the provisions of section ~~4-210~~
4-6-207, fails to establish his claim and right thereto, the
~~liquor alcoholic beverage~~ in question and the packages in
 which the ~~liquor alcoholic beverage~~ is kept shall forthwith
 be delivered to the ~~board~~ department. The ~~board~~ department
 shall thereupon, determine the market value of all forfeited
~~liquor alcoholic beverage~~ which is found to be suitable for

sale in the state liquor stores, and the ~~board~~ department
 shall pay the amount so determined to the state treasurer,
 after deducting therefrom the expenses necessarily incurred
 by the ~~board~~ department for transporting the forfeited
~~liquor alcoholic beverage~~ to the state liquor warehouses,
 and the ~~liquor alcoholic beverage~~ suitable for sale shall be
 taken into stock by the ~~board~~ department and sold under the
 provisions of this ~~act~~ code. All forfeited ~~liquor alcoholic~~
beverage which is found to be unsuitable for sale in state
 liquor stores shall be destroyed under competent supervision
 as may from time to time be directed by the ~~board~~
department.

(2) In every case in which ~~liquor~~ an alcoholic beverage
 is seized by a peace officer it shall be his duty to
 forthwith make or cause to be made to the ~~board~~ department a
 report in writing, of the particulars of such seizure."

Section 29. Section 4-212, R.C.M. 1947, is renumbered
 section 4-6-210, and is amended to read as follows:

"~~4-212~~ 4-6-210. Inspection of carriers' records--when
 authorized. For the purpose of obtaining information
 concerning any matter relating to the administration or
 enforcement of this ~~act~~ code, the ~~board~~ department or any
 person appointed by it in writing for the purpose may
 inspect the freight and express books and records, and all
 waybills, bills of lading, receipts, and documents in the

possession of any railway company, express company, or other common carrier doing business within the state containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the state."

Section 30. Section 4-213, R.C.M. 1947, is renumbered section 4-6-211, and is amended to read as follows:

"~~4-213~~ 4-6-211. Unlawful for carrier to refuse inspection of records. Every railway company, express company, or common carrier, and every officer or employee of any such company or common carrier, who neglects or refuses to produce and submit for inspection any book, record, or document referred to in the next preceding section when requested to do so by the ~~board~~ department or by a person so appointed by it shall be guilty of an offense against this act code."

Section 31. Section 4-214, R.C.M. 1947, is renumbered section 4-6-303, and is amended to read as follows:

"~~4-214~~ 4-6-303. Description of offense--sufficiency of. In describing the offense respecting the sale or keeping for sale or other disposal of liquor alcoholic beverages, or the having, keeping, giving, purchasing or the consumption of liquor alcoholic beverages in any information, summons, conviction, warrant, or proceeding under this act code, it shall be sufficient to state the

sale or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of ~~liquor~~ alcoholic beverages, simply without stating the name or kind of such liquor alcoholic beverage or the price thereof, or any person to whom it was sold or disposed of, or by whom it was taken or consumed, or from whom it was purchased or received, and it shall not be necessary to state the quantity of liquor alcoholic beverage so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity."

Section 32. Section 4-215, R.C.M. 1947, is renumbered section 4-6-304, and is amended to read as follows:

"~~4-215~~ 4-6-304. Description of offense--sufficiency--defenses need not be negatived. The description of any offense under this act code, in the words of this act code or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this act code, may be proved by the defendant, but need not be specified or negatived in the information or complaint; but if it is so specified or negatived, no proof in relation to the matter so specified nor negatived shall be required on the part of the informant

1 or complainant."

2 Section 33. Section 4-216, R.C.M. 1947, is renumbered
3 section 4-6-305, and is amended to read as follows:

4 "4-216 4-6-305. Sufficiency of evidence. In any
5 prosecution under this act code for the sale or keeping for
6 sale or other disposal of liquor alcoholic beverages, or the
7 having, keeping, giving, purchasing, or consuming of liquor
8 alcoholic beverages, it shall not be necessary that any
9 witness should depose to the precise description or quantity
10 of the liquor alcoholic beverages sold, disposed of, kept,
11 had, given, purchased, or consumed, or the precise
12 consideration (if any) received therefor, or to the fact of
13 the sale or other disposal having taken place with his
14 participation or to his own personal or certain knowledge;
15 but conviction may be based upon circumstantial evidence
16 reasonably tending to establish the guilt of the accused
17 beyond a reasonable doubt."

18 Section 34. Section 4-217, R.C.M. 1947, is renumbered
19 section 4-6-306, and is amended to read as follows:

20 "4-217 4-6-306. Proof of violation--sufficiency. In
21 proving the sale, disposal, gift, or purchase, gratuitous or
22 otherwise, or consumption of liquor alcoholic beverages, it
23 shall not be necessary in any prosecution to show that any
24 money actually passed or any liquor alcoholic beverages was
25 actually consumed, if the court hearing the case is

1 satisfied that a transaction in the nature of a sale,
2 disposal, gift, or purchase actually took place, or that any
3 consumption of liquor alcoholic beverages was about to take
4 place; and proof of consumption or intended consumption of
5 liquor alcoholic beverages on premises on which such
6 consumption is prohibited, by some person not authorized to
7 consume liquor an alcoholic beverage thereon, shall be
8 evidence that such liquor alcoholic beverage was sold or
9 given to or purchased by the person consuming, or being
10 about to consume, or carrying away the same, as against the
11 occupant of the said premises."

12 Section 35. Section 4-218, R.C.M. 1947, is renumbered
13 section 4-6-307, and is amended to read as follows:

14 "4-218 4-6-307. Analyst's report as prima facie
15 evidence of contents. In any prosecution under this act
16 code, or the regulations made thereunder, production by a
17 police officer, policeman, constable, inspector or peace
18 officer, of a certificate or report signed or purporting to
19 be signed by a United States or state analyst as to the
20 analysis or ingredients of any liquor alcoholic beverage or
21 other fluid or any preparation, compound, or substance, such
22 certificate or report shall be prima facie evidence of the
23 facts stated in such certificate or report and of the
24 authority of the person giving or making the same without
25 any proof of appointment or signature."

1 Section 36. Section 4-219, R.C.M. 1947, is renumbered
2 section 4-6-308 and is amended to read as follows:

3 "4-219 4-6-308. Presumption of intoxicating ~~liquor~~
4 beverage arises, when. The court trying a case shall, in the
5 absence of proof to the contrary, be at liberty to infer
6 that the ~~liquor~~ alcoholic beverage in question is
7 intoxicating from the fact that a witness described it as
8 intoxicating, or by a name which is commonly applied to an
9 intoxicating ~~liquor~~ beverage."

10 Section 37. Section 4-220, R.C.M. 1947, is renumbered
11 section 4-6-309, and is amended to read as follows:

12 "4-220 4-6-309. Inferences from facts of act code
13 claimed to be violation. Upon the hearing of any charge of
14 selling or purchasing ~~liquor~~ an alcoholic beverage, or of
15 unlawfully having or keeping ~~liquor~~ an alcoholic beverage,
16 contrary to any of the provisions of this act code, the
17 court trying the case shall have the right to draw
18 inferences of fact from the kind and quantity of ~~liquor~~
19 alcoholic beverages found in the possession of the person
20 accused, or in any building, premises, vehicle, motorcar,
21 automobile, vessel, boat, canoe, conveyance, or place
22 occupied or controlled by him, and from the frequency with
23 which ~~liquor~~ the alcoholic beverage is received thereat or
24 therein or is removed therefrom, and from the circumstances
25 under which it is kept or dealt with."

1 Section 38. Section 4-224, R.C.M. 1947, is renumbered
2 section 4-6-302, and is amended to read as follows:

3 "4-224 4-6-302. Appeals. An appeal shall lie from any
4 conviction or order made in the prosecution of any offense
5 against any of the provisions of this act code and the
6 practice and procedure on any appeal from any such
7 conviction or order, and all proceedings thereon shall be
8 governed by the law applicable to appeal in criminal cases."

9 Section 39. Section 4-225, R.C.M. 1947, is renumbered
10 section 4-6-201, and is amended to read as follows:

11 "4-225 4-6-201. Inspectors Investigators and
12 prosecuting officers may be employed by ~~board~~ department of
13 revenue. The ~~board~~ department of revenue may appoint one or
14 more ~~inspectors~~ investigators or prosecuting officers, who,
15 under its direction, shall perform such duties as it may
16 require, and who shall be paid such salaries, fees and
17 expenses as the said ~~board~~ department of revenue may fix."

18 Section 40. Section 4-226, R.C.M. 1947, is renumbered
19 section 4-1-306, and is amended to read as follows:

20 "4-226 4-1-306. Property and moneys acquired belong to
21 state--expenses of administration, how paid. All property,
22 whether real or personal, all moneys acquired, administered,
23 possessed or received by the ~~board~~ department and all
24 profits earned in the administration of this act code, shall
25 be the property of the state, and all expenses, debts and

liabilities incurred by the board department in connection with the administration of this act code, shall be paid by the board department from the moneys received by the board department under such administration."

Section 41. Section 4-229, R.C.M. 1947, is renumbered section 4-1-406, and is amended to read as follows:

"4-229 4-1-406. Disposition of money received. All moneys received from the sale of liquor at the state liquor stores shall be deposited in the revolving fund in the state treasury to the credit of the board department of revenue. The board department is hereby authorized to purchase liquor from moneys deposited to its account in the revolving fund. The board department shall transfer from its account in the revolving fund to its account in the earmarked revenue fund such moneys which are necessary to pay its administrative expense, subject to the limits imposed by legislative appropriation. No obligation created or incurred by the board department shall ever be, or become, a debt or claim against the state of Montana, but shall be payable by the board department solely from funds derived from the operation of state liquor stores. The board department shall pay into the state treasury to the credit of the general fund the receipts from all taxes and licenses by it collected, and also the net proceeds from the operation of state liquor stores."

Section 42. Section 4-233, R.C.M. 1947, is renumbered section 4-1-104, and is amended to read as follows:

"4-233 4-1-104. Intent and construction of act code. The purpose and intent of this act code are to prohibit transactions in liquor which take place wholly within the state of Montana except under state control as specifically provided by this act code, and every section and provision of this act code shall be construed accordingly. The provisions of this act code dealing with the importation, sale and disposition of liquor within the state through the instrumentality of a board department and otherwise provide the means by which such state control shall be made effective, and nothing in this act code shall be construed as forbidding, affecting or regulating any transaction which is not subject to the legislative authority of the state."

Section 43. Section 4-238, R.C.M. 1947, is renumbered section 4-6-401, and is amended to read as follows:

"4-238 4-6-401. Premises where liquor illegally sold common public nuisance. Any room, house, building, boat, vehicle, structure or place where intoxicating--liquor--is alcoholic beverages are knowingly manufactured, sold, or bartered, in violation of the-State-Liquor--Control--Act--of Montana this code or section 94-8-107 and all property knowingly kept and used in maintaining the same is hereby declared to be a common--"nuisance," public nuisance and any

1 person who maintains such a ~~common~~ nuisance shall be guilty
 2 of a misdemeanor, and upon conviction thereof shall be fined
 3 not less than one hundred dollars (\$100.00), nor more than
 4 five hundred dollars ~~(\$500.00)~~ (\$500) and by imprisonment
 5 not less than thirty days, nor more than six months."

6 Section 44. Section 4-240, R.C.M. 1947, is renumbered
 7 section 4-1-401, and is amended to read as follows:

8 "~~4-240~~ 4-1-401. License tax on liquor -- amount --
 9 distribution of proceeds. The department of revenue is
 10 hereby authorized and directed to charge, receive and
 11 collect at the time of sale and delivery of any liquor under
 12 any provisions of the laws of the state of Montana a license
 13 tax of five percent (5%) of the retail selling price on all
 14 liquor so sold and delivered. Said tax shall be charged and
 15 collected on all liquor brought into the state and taxed by
 16 the department of revenue. The retail selling price shall
 17 be computed by adding to the cost of said liquor the state
 18 markup as designated by ~~said--board~~ the department. Said
 19 five percent (5%) license tax shall be figured in the same
 20 manner as the state excise tax and shall be in addition to
 21 said state excise tax. The department of revenue shall
 22 retain the amount of such five percent (5%) license tax so
 23 received in a separate account. Four-fifths (4/5) of these
 24 revenues shall be distributed to the counties according to
 25 the amount of liquor sold in each county. One-fifth (1/5)

1 of these revenues shall be deposited in the general fund.
 2 Provided, however, in the case of purchases of liquor by a
 3 retail liquor licensee for use in his business, the
 4 department shall make such regulations as are necessary to
 5 apportion that proportion of license tax so generated to the
 6 county where the licensed establishment is located, for use
 7 as provided in section ~~4-241~~ 4-1-402, R.C.M. 1947. The
 8 department of revenue shall pay quarterly to each county
 9 treasurer the proportion of the license tax due each county.

10 The county treasurer of each county shall retain
 11 one-fourth (1/4) of said license tax, and shall, within
 12 thirty (30) days after receipt thereof, apportion the
 13 remaining three-fourths (3/4) thereof to the treasurers of
 14 the incorporated cities and towns within his county, said
 15 apportionment to be based in each instance upon the
 16 proportion which the gross sale of liquor in such
 17 incorporated city or town bears to the gross sale of liquor
 18 in all of the incorporated cities and towns in his said
 19 county."

20 Section 45. Section 4-301, R.C.M. 1947, is renumbered
 21 section 4-1-102, and is amended to read as follows:

22 "~~4-301~~ 4-1-102. ~~Citation-----of-----act--declaration~~
 23 Declaration of policy--~~as to sale of beer. This act may be~~
 24 ~~cited as the "Montana Beer Act."~~ It is hereby declared to
 25 be the policy of the state of Montana that the manufacture,

1 transportation, distribution, sale and possession of "beer,"
 2 as that term is hereinafter defined in this act code and
 3 which contains not more than four seven per centum (4 7%) of
 4 alcohol by weight, shall be controlled and regulated ~~by-and~~
 5 ~~under the provisions of the "Montana Beer Act" and the~~
 6 ~~"Montana Retail Liquor License Act"~~ as provided under this
 7 code. Beer, porter, ale, stout and malt liquors containing
 8 more than four seven per centum (4 7%) of alcohol by weight
 9 and which are defined as "liquor" ~~by the "State Liquor~~
 10 ~~Control Act of Montana,"~~ shall be subject to the regulations
 11 and controls provided ~~by the "State Liquor Control Act of~~
 12 ~~Montana," (section 4-101 through section 4-171, inclusive,~~
 13 ~~Revised Codes of Montana, 1947, as amended)~~ and the
 14 ~~regulations and controls provided by the "Montana Retail~~
 15 ~~Liquor License Act" (sections 4-401 through 4-441,~~
 16 ~~inclusive, Revised Codes of Montana, 1947, as amended)~~ for
 17 liquor.

18 Section 46. Section 4-303, R.C.M. 1947, is renumbered
 19 section 4-3-304, and is amended to read as follows:

20 "4-303 4-3-304. Closing hours for licensed retail beer
 21 establishments. Hereafter all licensed establishments
 22 wherein ~~beer as defined by subsection (b) of section 4-302,~~
 23 is alcoholic beverages are sold, offered for sale or given
 24 away at retail shall be closed during the following hours:

25 ~~(a) Sunday from two A.M. to one P.M.;~~

1 ~~(b)~~ (a) On any ~~other~~ day between two A.M. and eight
 2 A.M.; provided, however, that when any municipal
 3 incorporation has by ordinance further restricted the hours
 4 of sale of beer alcoholic beverages, then the sale of beer
 5 alcoholic beverages is prohibited within the limits of any
 6 such city or town during the time such sale is prohibited by
 7 this act code and in addition thereto during the hours that
 8 it is prohibited by such ordinance. During such hours all
 9 persons except the owner and employees of such licensed
 10 establishments shall be excluded therefrom except as
 11 provided in section 4-3-305."

12 Section 47. Section 4-304, R.C.M. 1947, is renumbered
 13 section 4-3-305, and is amended to read as follows:

14 "4-304 4-3-305. Sale of beer alcoholic beverages
 15 during closed hours forbidden--lawful business need not be
 16 closed. During the hours when the said licensed
 17 establishments where ~~beer is~~ alcoholic beverages are sold at
 18 retail are required by this act code to be closed, it shall
 19 be unlawful to sell, offer for sale or give away any beer
 20 such alcoholic beverages, and during such hours all persons
 21 save employees of such licensed establishments shall be
 22 excluded therefrom; provided, however, that when a licensed
 23 establishment is operated in conjunction with a hotel,
 24 restaurant, bus depot, railway terminal, or other lawful
 25 business other than that of the sale of intoxicating liquor

1 or beer, then such other lawful business need not be closed,
2 but only the part thereof where such beer or liquor is
3 sold."

4 Section 48. Section 4-308, R.C.M. 1947, is renumbered
5 section 4-3-202, and is amended to read as follows:

6 "~~4-308 4-3-202. Beer, when declared--nonintoxicating--~~
7 ~~sales,--when-permitted,--Beer-containing-one-half-of-one-per~~
8 ~~cent-(1/2-of-1%), or more, of alcohol by volume,--and--not~~
9 ~~more-than-three-and-two-tenths-per-cent-(3.2%) of alcohol by~~
10 ~~weight,--is--hereby-declared-to-be-nonintoxicating,--and--such~~
11 ~~beer--and--other--beer--containing--more--than---three---and~~
12 ~~two-tenths--per-cent-(3.2%), but not more than four per cent~~
13 ~~(4%) of alcohol by weight may be manufactured and/or sold or~~
14 ~~transported in and into this state or possessed--therein--in~~
15 ~~the--manner--and--under--the--conditions--prescribed--in--this--act~~
16 ~~and--not--otherwise. The sale of beer by the Montana--liquor~~
17 ~~control--board department is hereby prohibited, save and~~
18 ~~except ale, porter and stout containing more than--four--per~~
19 ~~cent-(4%) of alcohol by weight."~~

20 Section 49. Section 4-309, R.C.M. 1947, is renumbered
21 section 4-3-201, and is amended to read as follows:

22 "~~4-309 4-3-201. Possession, manufacture or disposal of~~
23 ~~beer in other manner than prescribed unlawful. It shall be~~
24 ~~unlawful to manufacture or sell, or dispose of, or possess~~
25 ~~for the purpose of sale, beer of any kind or character of an~~

1 alcoholic content greater than herein prescribed, or other
2 than in the manner permitted by this act code."

3 Section 50. Section 4-310, R.C.M. 1947, is renumbered
4 section 4-4-101, and is amended to read as follows:

5 "~~4-310 4-4-101. Applications for sale or manufacture~~
6 ~~of beer--qualifications of applicant. Any person, desiring~~
7 ~~to manufacture, import or and sell beer under the provisions~~
8 ~~of this act code, shall first apply to the board department~~
9 ~~for a permit so to do and pay with such application the~~
10 ~~license fee herein prescribed; the board department shall~~
11 ~~require of such applicant satisfactory evidence that the~~
12 ~~applicant is of good moral character and a law-abiding~~
13 ~~person. Upon being satisfied from such application, or~~
14 ~~otherwise, that such applicant is qualified as herein~~
15 ~~provided, the board department shall issue such license to~~
16 ~~such person, which license shall be at all times prominently~~
17 ~~displayed in the place of business of such applicant. If~~
18 ~~the board department shall find that such applicant is not~~
19 ~~qualified, no license shall be granted and such license fee~~
20 ~~shall be returned."~~

21 Section 51. Section 4-311, R.C.M. 1947, is renumbered
22 section 4-3-203, and is amended to read as follows:

23 "~~4-311 4-3-203. Brewers' monthly report -- power of~~
24 ~~board department to inspect books and premises. Every~~
25 ~~brewer, licensed to do business in this state, shall, on or~~

before the fifteenth day of each month, make an exact return to the board department of the amount of beer manufactured by him and the amount sold by him in the previous month, and of his inventory, in the manner and form as shall be prescribed by the board department, and the board department shall have the right at any time to make an examination of any brewer's books and of his premises, and otherwise check the accuracy of any such return, or to check the alcoholic content of beer manufactured by him."

Section 52. Section 4-313, R.C.M. 1947, is renumbered section 4-3-204, and is amended to read as follows:

"~~4-313~~ 4-3-204. Sale of beer by brewers--to whom. It shall be lawful for any brewer to sell or dispose of beer manufactured by him to any licensed wholesaler,--retailer, club--or--common--carrier--holding--and--having--a--license--under this-act."

Section 53. Section 4-317, R.C.M. 1947, is renumbered section 4-3-206, and is amended to read as follows:

"~~4-317~~ 4-3-206. Licenses of brewers--persons to whom brewers may sell beer--~~barrelage-tax~~. {1} Any brewer duly licensed as such by the United States of America, who manufactures beer in the state of Montana, upon payment of the annual license fee imposed by section ~~4-341~~ 4-4-401 and upon presenting satisfactory evidence to the board department as required by section ~~4-319~~ 4-4-101, shall be

licensed by the board department in accordance with the provisions of this act code and such regulations as may be prescribed by the board department, to sell and deliver:

(a) Beer to a vendor;

(b) Beer to any licensees who are entitled to purchase beer from a brewer under this act; or

(c) Beer to the public, subject to the limitations and restrictions contained in this act; or to do any one or more of such acts of sale and delivery of beer.

~~{2}--In--addition--to--the--annual--license--tax--imposed--by section-4-341--a--tax--of--three--dollars--{83}--per--barrel--of thirty-one--{31}--gallons--is--hereby--levied--and--imposed--on--each and--every--barrel--of--beer--sold--by--any--duly--licensed--brewer who--manufactures--beer--in--the--state--of--Montana,--which--said barrelage--tax--shall--be--due--at--the--end--of--each--month--and shall--be--payable--with--the--brewer's--monthly--return--or statement--required--to--be--made--to--the--board--under--the provisions--of--section-4-311."~~

Section 54. Section 4-317.1, R.C.M. 1947, is renumbered section 4-4-102, and is amended to read as follows:

"~~4-317.1~~ 4-4-102. Right of brewers to maintain and operate storage depots--annual licenses. It shall be lawful for any brewer duly licensed to manufacture beer in the state of Montana, upon the payment to the board department

of an annual license fee, in addition to all other fees and taxes required to be paid by such brewer, of four hundred dollars (\$400.00) for each storage depot, to own, lease, maintain and operate, in any city or town in the state of Montana, a building for use as a storage depot, equipped with refrigeration and cooling apparatus, for receiving, handling, and storing beer therein and distributing and selling beer therefrom, as brewers are permitted to sell and distribute beer under the provisions of this act code."

Section 55. Section 4-317.7, R.C.M. 1947, is renumbered section 4-3-212, and is amended to read as follows:

"~~4-317~~ 4-3-212. Agreements filed with department of revenue. An exact copy of all agreements, contracts or franchises between a brewer and a wholesaler shall be filed with the department of revenue as a public document and shall be available to any of the parties to a dispute. The department, upon the instigation of any action in a court of record, shall file an exact certified copy of the agreement with the court for the court's consideration in determining any matter before it. Any contracts, agreements or franchises not upon record with the board department shall not be considered by any court as having any force or effect."

Section 56. Section 4-319, R.C.M. 1947, is renumbered

section 4-4-103, and is amended to read as follows:

"~~4-318~~ 4-4-103. Wholesalers' licenses--application for and issuance--subwarehouse--imported beer handled through warehouse or subwarehouse. Any person desiring to sell and distribute beer as a wholesaler under the provisions of this act code shall apply to the board department for a license to do so and tender with his application the license fee hereinafter provided for and the board department is hereby empowered, authorized and directed to issue ~~one--{1}--~~ wholesale-license-for-every-thirty-{30}--retail-beer-licenses figured--on-the-number-of-retail-beer-licenses-issued-in-the state wholesale licenses to qualified applicants in accordance with the provisions of this act code; such license shall be at all times prominently displayed in the place of business of such wholesaler.

To qualify for a wholesaler's license the applicant shall ~~have-been~~ be a resident of Montana ~~for--a--period--of~~ five--{5}--years-immediately-prior-to-making-application; or ~~if-said-applicant-is-a-Montana-corporation-said--corporation~~ shall--have--been--organized--for-a-period-of-five-{5}-years immediately-prior-to-making-application; provided, however, any individual or partnership which has been licensed as a beer wholesaler may, upon incorporation in accordance with the laws of the state of Montana, transfer such license to the corporation if a majority of the capital stock thereof

1 is held by said individual or the members of said
 2 partnership; or if applicant is a foreign corporation said
 3 corporation shall have-been be authorized to do business in
 4 Montana ~~for-a-period-of-five-(5)-years-immediately-prior--to~~
 5 ~~making--application;~~ and said applicant shall have a fixed
 6 place of business, sufficient capital, the facilities,
 7 storehouse, receiving house or warehouse for the receiving
 8 of, storage, handling and moving of beer in large and
 9 jobbing quantities for distribution and sale in original
 10 packages to other licensed wholesalers or licensed
 11 retailers. Each wholesaler shall be entitled to only one
 12 (1) wholesale license, which license shall be issued for his
 13 principal place of business in Montana; a duplicate license
 14 may be issued for one (1) subwarehouse only in Montana for
 15 each wholesale licensee, which said duplicate license shall
 16 at all times be prominently displayed at said subwarehouse;
 17 ~~licenses--already--issued--which--are--in--excess--of--said~~
 18 ~~limitations--and--which--are--of--issue--on--the-date-of-the~~
 19 ~~passage-and-approval-of-this-act, shall-be-renewable, but no~~
 20 ~~new-wholesale-beer-licenses-shall-be-issued-until-the-number~~
 21 ~~of-licenses-shall-be-reduced-to-within-the-above-limitation.~~

22 All beer manufactured outside of the state of Montana
 23 and shipped into Montana shall be consigned to and shipped
 24 to a licensed wholesaler, and by him unloaded into his
 25 warehouse in Montana or subwarehouse in Montana; said

1 wholesaler shall distribute said beer from such warehouse or
 2 subwarehouse; said wholesaler shall keep records at his
 3 principal place of business of all beer including the name
 4 or kind received, on hand, sold and distributed; said
 5 records may at all times be inspected by any member or
 6 representative of the board department; any beer which has
 7 been shipped into Montana and has not been shipped to and
 8 distributed from a warehouse of a licensed wholesaler shall
 9 be seized by any peace officer or representative of the
 10 board department and may be confiscated in the manner as
 11 provided for the confiscation of intoxicating liquor."

12 Section 57. Section 4-319, R.C.M. 1947, is renumbered
 13 section 4-3-213, and is amended to read as follows:

14 "~~4-319~~ 4-3-213. Monthly report of wholesaler. Every
 15 wholesaler, licensed to do business in this state, as herein
 16 provided, shall on or before the fifteenth day of each
 17 month, make an exact return to the board department of the
 18 amount of beer manufactured in this state, sold and
 19 delivered by him, and also of the amount of beer
 20 manufactured in places outside of the state, sold and
 21 delivered by him, during the previous month, and of his
 22 inventory in the manner and form as shall be prescribed by
 23 the board department, and the board department shall have
 24 the right at any time to make an examination of the said
 25 wholesaler's books and of his premises, and otherwise check

1 the accuracy of such return or to check the alcoholic
2 content of beer which he may have on hand."

3 Section 58. Section 4-320, R.C.M. 1947, is renumbered
4 section 4-6-403, and is amended to read as follows:

5 "4-320 4-6-403. Penalty for brewer's and wholesalers'
6 failure to ~~file--statement--payment--of~~ pay tax. With such
7 ~~return, the said wholesaler shall pay to the board the~~
8 ~~amount of tax upon all beer not manufactured in this state~~
9 ~~on the basis hereinafter provided, which shall have been~~
10 ~~said by him during such previous month.~~ Any such tax owed
11 by a brewer or wholesaler under this code not paid within
12 the time herein provided for shall be delinquent and a
13 penalty of five per cent (5%) thereof shall be added thereto
14 and the whole thereof shall bear interest at the rate of one
15 per cent (1%) per month from the date of delinquency until
16 paid, and any brewer or wholesaler who fails, neglects or
17 refuses to make the return to the board department provided
18 for in section sections 4-319 4-3-203 or 4-3-213, or refuses
19 to allow such examination provided for in section sections
20 4-319 4-3-203 or 4-3-213, or fails to make an accurate
21 return according to the manner prescribed, shall be deemed
22 guilty of having committed a misdemeanor and upon conviction
23 thereof shall be fined in an amount not exceeding one
24 thousand dollars (\$1,000.00)."

25 Section 59. Section 4-321, R.C.M. 1947, is renumbered

1 section 4-3-214, and is amended to read as follows:

2 "4-321 4-3-214. To whom wholesaler may sell. It shall
3 be lawful for any wholesaler to sell and deliver beer
4 purchased or acquired by him to a wholesaler, retailer, club
5 or to a common carrier, holding and having a license under
6 this act."

7 Section 60. Section 4-325, R.C.M. 1947, is renumbered
8 section 4-3-217, and is amended to read as follows:

9 "4-325 4-3-217. Penalty for brewer's failure to make
10 returns--lien of taxes--enforcement--release. If any brewer
11 subject to the payment of the tax provided for in
12 ~~subdivision--(3)--(2)}~~ of section 4-317 4-1-405 or any
13 wholesaler subject to the payment of the tax provided for in
14 section 4-324 4-1-404, shall fail, neglect or refuse to make
15 any return required by Montana Beer Act this code, or shall
16 fail to make payment of such tax within the time herein
17 provided, the board department shall, forthwith after such
18 time has expired, proceed to inform itself as best it may
19 regarding the matters and things required to be set forth in
20 such return and from such information as it may be able to
21 obtain, to make a statement showing such matters and things
22 and determine and fix the amount of such tax due the state
23 from such delinquent brewer or wholesaler and shall add
24 thereto a penalty of five per cent (5%) thereof for the
25 first failure, willful neglect or refusal; ten per cent

1 (10%) for the second; fifteen per cent (15%) for the third;
 2 and twenty-five per cent (25%) for the fourth, and each
 3 subsequent failure, neglect or refusal, which shall be in
 4 addition to the five per cent (5%) penalty hereinbefore
 5 provided for nonpayment of such tax within the time
 6 hereinbefore provided. Said tax and the penalties added
 7 thereto shall bear interest at the rate of one per cent (1%)
 8 per month from the date such returns should have been made
 9 and said tax paid. The board department shall then proceed
 10 to collect such tax with penalties and interest. Upon
 11 request of the board department it shall be the duty of the
 12 attorney general to commence and prosecute to final
 13 determination in any court of competent jurisdiction an
 14 action to collect such tax. All taxes due from any brewer
 15 or wholesaler under the provisions of Montana-Beer-Act this
 16 code, together with all penalties and interest thereon,
 17 shall be a lien upon any and all property of such brewer or
 18 wholesaler upon the filing by the board department of a
 19 duplicate copy of the statement so made by the board
 20 department, or a certified copy of any return filed with
 21 said-board the department, in the office of the county clerk
 22 of the county where such property is situated, which lien
 23 shall have precedence over any other claim, lien or demand
 24 thereafter filed or recorded and may be enforced in the name
 25 of the state of Montana in the same manner as other liens

1 are enforced by law. No action shall be maintained to
 2 enjoin the collection of such tax or any part thereof. When
 3 the amount due the state is paid in full and before the
 4 entry of foreclosure decree, the board department shall
 5 release the said lien by filing in the office of the county
 6 clerk wherein is filed the said lien a written release
 7 thereof. At any time prior to the payment of said taxes,
 8 penalty and interest, before the entry of foreclosure
 9 decree, the board department may release from the operation
 10 of said lien a part of said property to enable the brewer or
 11 wholesaler to mortgage, sell or otherwise dispose of the
 12 same in order to procure funds with which to pay said taxes,
 13 penalty and interest, provided there remains, in the
 14 judgment of the board department, sufficient property
 15 subject to said lien to ensure the payment of the whole of
 16 said unpaid taxes, penalty and interest."

17 Section 61. Section 4-326, R.C.M. 1947, is renumbered
 18 section 4-3-218, and is amended to read as follows:

19 "4-326 4-3-218. Carriers' reports of beer transported.
 20 Every railroad and every motor carrier transporting beer
 21 manufactured out of this state from points without this
 22 state and delivering the same to points within this state
 23 shall, on or before the fifteenth day of each month, make an
 24 exact return to the board department of the amount of such
 25 beer so transported and delivered by such railroad or motor

1 carrier during the previous month, and shall state in such
2 return the name and address of the consignor, the name and
3 address of the consignee, the date of delivery, and the
4 amount delivered."

5 Section 62. Section 4-327, R.C.M. 1947, is renumbered
6 section 4-4-104, and is amended to read as follows:

7 "4-~~327~~ 4-4-104. Retailers' license--application and
8 issuance--display required--check of alcoholic content by
9 board department. Any person desiring to possess and have
10 for sale beer, under the provisions of this act code, for
11 the purpose of selling it at retail, shall first apply to
12 the board department for a permit so to do and tender with
13 such application the license fee herein provided for. Upon
14 being satisfied from such application or otherwise that the
15 applicant is qualified as herein provided, the board
16 department shall issue a license to such person, which
17 license shall at all times be prominently displayed in the
18 place of business of the applicant. If the board department
19 shall find that the applicant is not qualified, no license
20 shall be granted and the license fee tendered shall be by
21 the board department returned. The board department shall
22 have the right and is hereby given authority to make, at any
23 time, an examination of the books of account of any such
24 retailer and of his premises and otherwise check his methods
25 of conducting business and the alcoholic contents of the

1 beer kept by him for sale. A person may not sell beer at
2 retail without a valid license issued under this code."

3 Section 63. Section 4-328, R.C.M. 1947, is renumbered
4 section 4-3-302, and is amended to read as follows:

5 "~~4-328~~ 4-3-302. Sale of beer by retailer--consumption
6 on premises. It shall be lawful for such retailer to sell
7 and serve beer either on draught or in bottles containers to
8 the public to be consumed on the premises of such retailer."

9 Section 64. Section 4-330, R.C.M. 1947, is renumbered
10 section 4-3-301, and is amended to read as follows:

11 "~~4-330~~ 4-3-301. Purchase of beer by retailer--persons
12 to whom beer may not be sold, delivered or given by brewers,
13 wholesalers or retailers. It shall be unlawful for such a
14 licensed retailer to purchase or acquire beer from anyone
15 except a brewer or wholesaler or retailer licensed under the
16 provisions of this act code.

17 It shall be unlawful for any brewer, wholesaler or
18 retailer, his or her employee or employees to sell, deliver
19 or give away, or cause or permit to be sold, delivered or
20 given away, any beer to:

- 21 1. Any person under the age of eighteen (18) years;
- 22 2. Any intoxicated person or any person actually,
- 23 apparently or obviously intoxicated;

24 3.--An-habitual-drunkard;-or

25 4.--An-interdicted-person-

1 Any brewer, wholesaler or retailer violating any of the
 2 provisions of this section shall upon conviction thereof be
 3 subject to the penalties provided for in section 4-305 of
 4 the Montana Beer Act, and in addition thereto the license of
 5 any such brewer, wholesaler or retailer shall in the
 6 discretion of the board be immediately revoked, or said
 7 license may be suspended for a period of not more than three
 8 (3) months. Any finer or other person who knowingly
 9 misrepresents his or her qualification for the purpose of
 10 obtaining beer from any licensee shall be equally guilty
 11 with said licensee and shall upon conviction thereof be
 12 subject to the penalty provided in section 4-305 of the
 13 Montana Beer Act."

14 Section 65. Section 4-332, R.C.M. 1947, is renumbered
 15 section 4-4-105, and is amended to read as follows:

16 "4-332 4-4-105. Special permits to sell beer--
 17 application and issuance--fee. (1) Any association or
 18 corporation conducting a picnic, convention, fair, civic or
 19 community enterprise, or sporting event, shall in the
 20 discretion of the liquor division be entitled to a special
 21 permit to sell beer to the patrons of such event to be
 22 consumed within the enclosure wherein the event is held.

23 The application of any such association or corporation
 24 shall be presented ten (10) days in advance and shall
 25 describe the location of such enclosure wherein such event

1 is held, the nature of such event, the period when it is
 2 contemplated that the same will be held. Such application
 3 shall be accompanied by the amount of the permit fee
 4 hereinafter provided.

5 The permit issued to such association or corporation
 6 shall be a special permit, but shall not authorize the sale
 7 of beer except starting one (1) day in advance of the
 8 regular period when events are being held upon such grounds
 9 and during the period described in such application, and for
 10 one (1) day thereafter.

11 The permit fee shall be at the rate of fifteen dollars
 12 (\$15) per day for each day beer is sold, or to be sold at
 13 those events lasting two (2) or more days, but in no event
 14 less than the sum of thirty dollars (\$30), hereby fixed as
 15 the minimum fee for such permit.

16 (2) Any post of a nationally chartered veterans'
 17 organization or any lodge of a recognized national fraternal
 18 organization, not otherwise licensed under this act code,
 19 shall in the discretion of the board department, without
 20 notice or hearing as provided in section 4-407-1 4-4-302, be
 21 entitled to a special permit to sell beer at such post or
 22 lodge, to members and their guests only, to be consumed
 23 within the hall or building of such post or lodge.

24 The application of such nationally chartered veterans'
 25 organization or lodge of a recognized national fraternal

organization shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of ~~five ten~~ dollars ~~(65.00)~~ (\$10).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the ~~board~~ department shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year."

Section 66. Section 4-333, R.C.M. 1947, is renumbered section 4-4-201, and is amended to read as follows:

"~~4-333~~ 4-4-201. Issuance of retail beer licenses -- limit on number of ~~---off-premises~~ beer licenses -- ~~tap~~ ~~and--cancellation----~~ wine license amendments -- retail license fee. (1) Except as otherwise provided by law, a license to sell beer at retail, or beer and wine at retail pursuant to subsection (2), in accordance with the provisions of this act and the regulations of the department of revenue, may be issued to any person, firm or corporation who shall be approved ~~by--a-majority-of-the-board~~ by the department as a fit and proper person, firm or corporation to sell beer; provided, that ~~the--number-of-retail-beer licenses-that-the-board-may-issue--shall-be--determined--as follows:~~

(a) ~~The~~ the number of retail beer licenses that the ~~board~~ department may issue for premises situated within

incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by congress, to wit:

In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, ~~not-more-than-two-(2)-retail beer--licenses--to-be-used-in-conjunction-with-retail-liquor licenses--and~~ not more than one (1) ~~additional~~ retail beer license which shall not be used in conjunction with a retail liquor license; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities or towns, ~~two-(2)-retail-beer-licenses--for--the--first--five--hundred (500)--inhabitants--and-ans-(1)-retail-beer-license-for-each additional-five-hundred-(500)-inhabitants, which-said-retail beer-licenses-shall--be--used--in--conjunction--with--retail liquor--licenses,--and~~ one (1) ~~additional~~ beer license for each five hundred (500) inhabitants which said beer license shall not be used in conjunction with retail liquor licenses; in incorporated cities of over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities, ~~five--(5)--retail--beer~~

1 ~~licenses--for--the--first--two--thousand--(2000)--inhabitants--and~~
 2 ~~one--(1)--retail--beer--license--for--each--additional--one--thousand~~
 3 ~~(1000)--inhabitants--which--said--retail--beer--licenses--shall--be~~
 4 ~~used--in--conjunction--with--retail--liquor--licenses--and two (2)~~
 5 additional retail beer licenses for the first two thousand
 6 (2000) inhabitants or major fraction thereof and one (1)
 7 additional retail beer license for each additional two
 8 thousand (2000) inhabitants which shall not be used in
 9 conjunction with retail liquor licenses. The number of the
 10 inhabitants in such cities and towns, exclusive of the
 11 number of inhabitants residing within a distance of five (5)
 12 miles from the corporate limits thereof, shall govern the
 13 number of retail beer licenses that may be issued for use
 14 within such cities and towns and within a distance of five
 15 (5) miles from the corporate limits thereof; provided, that
 16 where two (2) or more incorporated municipalities are
 17 situated within a distance of five (5) miles from each
 18 other, the total number of retail beer licenses that may be
 19 issued for use in both of such municipalities and within a
 20 distance of five (5) miles from their respective corporate
 21 limits, shall be determined on the basis of the combined
 22 populations of both of such municipalities and shall not
 23 exceed the foregoing limitations. The said distance of five
 24 (5) miles from the corporate limits of any incorporated city
 25 or incorporated town shall be measured in a straight line

1 from the nearest entrance of the premises proposed for
 2 licensing to the nearest corporate boundary of such city or
 3 town. Retail beer licenses of issue on the date of the
 4 passage and approval of this act and which are in excess of
 5 the foregoing limitations shall be renewable, but no new
 6 licenses shall be issued in violation of such limitations;
 7 provided, that such limitations shall not prevent the
 8 issuance of a nontransferable and nonassignable retail beer
 9 license to any post of a nationally chartered veterans'
 10 organization or any lodge of a recognized national fraternal
 11 organization, if such veterans' or fraternal organization
 12 has been in existence for a period of five (5) years or more
 13 prior to January 1, 1949. No incorporated city or
 14 incorporated town may by ordinance restrict the number of
 15 licenses that the board department may issue; provided that
 16 no retail beer license may be issued by the board department
 17 for any premises situated within any zone of such city or
 18 town wherein the sale of beer is prohibited by ordinance, a
 19 certified copy of which has been filed with the board
 20 department. The board department shall have discretion to
 21 deny the issuance of a retail beer license if it shall
 22 determine that the premises proposed for licensing are off
 23 regular police beats and cannot be properly policed by local
 24 authorities.

25 (b) The number of retail beer licenses that the board

1 department may issue for use at premises situated outside of
 2 any incorporated city or incorporated town and outside of
 3 the area within a distance of five (5) miles from the
 4 corporated limits thereof, or for use at premises situated
 5 within any unincorporated town shall be as determined by the
 6 board department in the exercise of its sound discretion;
 7 provided, that no retail beer license shall be issued for
 8 any premises so situated unless the board department shall
 9 determine that the issuance of such license is required by
 10 public convenience and necessity.

11 {2}--A retail license to sell beer in the original
 12 packages for off-premise consumption only may be issued to
 13 any person, firm or corporation who shall be approved by a
 14 majority of the board as a fit and proper person, firm or
 15 corporation to sell beer and whose premises proposed for
 16 licensing are operated as a bona fide grocery store or a
 17 drugstore licensed as a pharmacy. The number of such
 18 licenses that the board may issue shall not be limited by
 19 the provisions of subsection (1) of this section, but shall
 20 be determined by the board in the exercise of its sound
 21 discretion, and the board may in the exercise of its sound
 22 discretion grant or deny any application for any such
 23 license or suspend or revoke any such license for cause.
 24 The annual license fee for a license to sell beer at retail
 25 for off-premise consumption shall be the same as for a

1 retail beer licensee

2 {3}--From and after February 1, 1949, any retail
 3 license issued pursuant to this act (including any retail
 4 license to sell beer for off-premise consumption), not
 5 actually used in a going establishment for a period of
 6 ninety (90) days, shall automatically lapse. Upon
 7 determining the fact of nonuser for such period the board
 8 shall cancel such license of record and no portion of the
 9 fee paid therefor shall be refundable. The provisions of
 10 this subsection shall not apply to the license of any
 11 licensee whose premises are operated on a seasonal basis in
 12 connection with a bona fide dude ranch, resort, park, hotel,
 13 tourist facility or like business, provided such licensee
 14 has secured written authority from the board to close his
 15 licensed premises for a specified period of greater than
 16 ninety (90) days duration, and providing further that
 17 should the liquor control board determine that such lapse
 18 was reasonably beyond the control of the licensee, then the
 19 lapse provision set out above shall not apply.

20 {4} (2) A person holding a license to sell beer for
 21 consumption on the premises at retail may apply to the
 22 department for an amendment to the license permitting the
 23 holder to sell wine as well as beer. The department
 24 division may issue such amendment if it finds, on a
 25 satisfactory showing by the applicant, that the sale of wine

1 for consumption on the premises would be supplementary to a
 2 restaurant or prepared food business. A person holding a
 3 beer-and-wine license may sell wine ~~subject--to--the~~
 4 ~~limitations-imposed--by--this--title--on--selling--beer for~~
 5 consumption on the premises. He may buy wine only at retail
 6 from the department. Nonretention of the beer license, for
 7 whatever reason, shall mean automatic loss of the wine
 8 amendment license.

9 ~~45~~ (3) The annual license fee for a license to sell
 10 wine on the premises, when issued as an amendment to a beer
 11 only license shall be two hundred dollars (\$200).

12 (4) A retail license to sell beer in the original
 13 packages for off-premise consumption only may be issued to
 14 any person, firm or corporation who shall be approved by the
 15 department as a fit and proper person, firm or corporation
 16 to sell beer and whose premises proposed for licensing are
 17 operated as a bona fide grocery store or a drugstore
 18 licensed as a pharmacy. The number of such licenses that
 19 the department may issue shall not be limited by the
 20 provisions of subsection (1) of this section, but shall be
 21 determined by the department in the exercise of its sound
 22 discretion, and the department may in the exercise of its
 23 sound discretion grant or deny any application for any such
 24 license or suspend or revoke any such license for cause.
 25 The annual license fee for a license to sell beer at retail

1 for off-premises consumption shall be the same as for a
 2 retail beer license."

3 Section 67. Section 4-338, R.C.M. 1947, is renumbered
 4 section 4-3-104, and is amended to read as follows:

5 "~~4-338~~ 4-3-104. Purchase of beer must be from licensed
 6 brewer, wholesaler or retailer. It shall be unlawful for the
 7 operator of any ~~such-railroad-trainy-as-a~~ common carrier, or
 8 its employees, to make sale of or dispose of any beer or
 9 malt liquors except such as shall have been lawfully
 10 acquired or purchased from a brewery, or wholesaler ~~or~~
 11 ~~retailer~~ duly licensed."

12 Section 68. Section 4-341, R.C.M. 1947, is renumbered
 13 section 4-4-401, and is amended to read as follows:

14 "~~4-341~~ 4-4-401. Fees for licenses--expiration dates--
 15 regulation by cities and towns. Each licensee, under the
 16 provisions of this act code, shall pay an annual license fee
 17 as follows:

18 Each "brewer," wherever located, whose product is sold
 19 or offered for sale within the state, five hundred dollars
 20 ~~4500+00~~ (\$500);

21 Each "wholesaler" four hundred dollars ~~4400+00~~
 22 (\$400);

23 Each "retailer" two hundred dollars ~~4200+00~~ (\$200);

24 Any unit of a nationally chartered veterans'
 25 organization fifty dollars ~~450+00~~ (\$50);

1 Each "vehicle" being a common carrier of passengers, or
 2 other persons operating buffet and dining cars for such
 3 common carrier, twenty-five dollars ~~(\$25.00)~~ (\$25).

4 All licenses issued in any year shall expire on the
 5 30th day of June at midnight of such year. A transfer of
 6 any such license may be made on application to the Montana
 7 ~~liquor-control-board~~ department of revenue with the consent
 8 of the said ~~board~~ department provided that said transferee
 9 shall qualify under this act code. The cities and
 10 incorporated towns may enact ordinances defining certain
 11 areas in said cities or towns where beer may or may not be
 12 sold providing that said ordinance does not affect the limit
 13 of retail beer licenses which shall be issued by the Montana
 14 ~~liquor-control-board~~ department of revenue based upon the
 15 population of the city or town and said city or town shall
 16 file a certified copy of said ordinance with the Montana
 17 ~~liquor-control-board~~ department of revenue; the cities and
 18 towns may also impose a fee on a licensee of the ~~board~~
 19 department for selling beer at retail in the city or town
 20 providing said fee shall be reasonable and not in excess of
 21 the ~~amount-imposed-by-the-state~~ limits set by section
 22 4-4-406. This act code shall not be construed or
 23 interpreted so as to repeal, amend, modify, change, or alter
 24 any provisions of the ~~Montana-Beer-Act~~ this code which
 25 require beer manufactured outside of the state of Montana

1 and shipped into Montana to be consigned to and shipped to a
 2 licensed wholesaler and by him unloaded into his warehouse
 3 or subwarehouse in Montana."

4 Section 69. Section 4-342, R.C.M. 1947, is renumbered
 5 as section 4-4-402, and is amended to read as follows:

6 "~~4-342~~ 4-4-402. Denial of application for license or
 7 renewal -- suspension or revocation -- actions. The ~~board~~
 8 department may (1) upon its own motion and shall (2) upon a
 9 written, verified complaint of any person, investigate the
 10 action and operation of any brewer, wholesaler or retailer
 11 licensed under the-Montana-Beer-Act this code. If the ~~board~~
 12 department, after investigation, shall have reasonable cause
 13 to believe that any such licensee has violated any of the
 14 provisions of this act code, or any rules, or regulations of
 15 the ~~board~~ department, it may, in its discretion, and in
 16 addition to the other penalties herein prescribed, reprimand
 17 a licensee, proceed to revoke the license of any such
 18 licensee, or it may suspend the same for a period of not to
 19 exceed three (3) months, or it may refuse to grant a renewal
 20 of said license upon the expiration thereof,--~~under--the~~
 21 ~~procedures--herein--provided,--if--the--board--shall,--in--its~~
 22 ~~sound-discretion,--determine--to--invoke--such--procedures--for~~
 23 ~~the--purpose--of--refusing--to--grant--a--license--or--refusing--to~~
 24 ~~grant--a--renewal--thereof--to--any--applicant,--or--for--revoking--or~~
 25 ~~suspending--any--license--previously--granted,--it--shall--give~~

1 applicant--or--licensee,--as--the--case--may--be--fifteen--(15)
 2 days--notice--in--writing--of--its--intended--action,--addressed
 3 and--forwarded--by--registered--mail--to--the--applicant--or
 4 licensee--at--the--address--given--in--the--application--for
 5 license,--or--upon--the--existing--license,--as--the--case--may--be
 6 stating--generally--the--basis--and--reasons--for--its--intended
 7 action--and--the--proposed--action,--Within--said--fifteen--(15)
 8 day--period--said--applicant--or--licensee--may,--in--cases--of
 9 intention--to--refuse--to--grant--a--license,--or--intention--to
 10 refuse--to--grant--a--renewal--thereof,--institute--proceedings--in
 11 the--nature--of--a--writ--of--review,--or,--in--case--of--intention--to
 12 revoke--or--suspend--a--license,--institute--proceedings--in
 13 injunction,--and--in--any--event--in--the--district--court--of--the
 14 county--wherein--the--premises--of--applicant--or--licensee--are
 15 located--for--the--purpose--of--having--the--intended--action--of--the
 16 board--judicially--reviewed--and--inquired--into--for--(a)--abuse--of
 17 discretion--on--the--part--of--the--board,--(b)--failure--of--the
 18 board--to--observe,--or--its--departure--from,--or--disregard--of--the
 19 applicable--law--governing--the--board--in--the--particular
 20 circumstances,--or--(c)--for--arbitrary--or--tyrannical--action--by
 21 the--board,--The--board--shall--in--all--cases--certify--to--the
 22 court--its--complete--record--in--the--matter--and--the--issues--shall
 23 be--heard--on--the--merits--by--the--court--upon--such--record--and
 24 upon--such--further--legal--evidence--as--the--parties--may--present,
 25 If--the--court--in--any--such--proceedings--determines--that--such

1 licensee--has,--in--fact,--violated--any--provisions--of--this--act
 2 or--any--regulations--of--the--board,--the--court--shall--dismiss
 3 such--proceedings,--and--the--board--shall--proceed--to--such
 4 administrative--determination--as--to--it--seems--proper--in--the
 5 circumstances,--Pending--determination--of--such--matter--on--the
 6 merits--the--court--may,--based--upon--a--showing--of--undue--hardship
 7 to--a--licensee--and--upon--the--posting--of--a--proper--bond--in--an
 8 amount,--and--conditioned--upon--such--terms--as--the--court--may
 9 prescribe--in--the--presence--of--the--surrounding--circumstances,
 10 stay--the--effective--date--of--the--intended--action--of--the--board
 11 for--such--time--as--to--the--court--may--seem--proper,--If--no--stay
 12 order--is--issued--by--the--court--or--any--stay--order--once--issued
 13 has--expired,--the--board--shall--issue--its--order--of--suspension
 14 or--of--revocation--of--license--or--its--order--denying--the--license
 15 applied--for,--or--renewal--thereof,--If--the--court--shall,--on--the
 16 other--hand,--determine--that--good--cause--did--not--exist--for--the
 17 intended--action--of--the--board,--or--that--the--board--abused--its
 18 discretion,--or--otherwise--acted--unlawfully--with--respect--to
 19 its--intended--action,--on--any--of--the--grounds--herein--stated,
 20 the--court--shall--issue--its--order--and--decree--accordingly--and
 21 the--board--shall--comply--therewith,--Either--party--to--the
 22 proceedings--in--the--district--court--may--appeal--from--its
 23 decision--to--the--supreme--court--of--the--state--of--Montana,--by
 24 following--the--procedures--applicable--to--such--appeals--in--civil
 25 actions, or impose a civil penalty not to exceed one

1 thousand five hundred dollars (\$1500), subject to the
 2 opportunity for a hearing under the Montana Administrative
 3 Procedure Act."

4 Section 70. Section 4-344, R.C.M. 1947, is renumbered
 5 section 4-6-301, and is amended to read as follows:

6 "4-344 4-6-301. Jurisdiction of courts. As to
 7 misdemeanor actions, ~~The the~~ district courts of this state
 8 shall have concurrent jurisdiction with justice of the peace
 9 courts in all prosecutions under this act code."

10 Section 71. Section 4-346, R.C.M. 1947, is renumbered
 11 section 4-6-402, and is amended to read as follows:

12 "4-346 4-6-402. Action to enjoin nuisance --
 13 injunction -- order of court -- bond. An action to enjoin
 14 any nuisance defined in this act code may be brought in the
 15 name of the state of Montana by the attorney general of the
 16 state or by any county attorney. Such action shall be
 17 brought and tried as an action in equity and may be brought
 18 in any court having jurisdiction to hear and determine
 19 equity cases. If it is made to appear by affidavits or
 20 otherwise, to the satisfaction of the court, or judge in
 21 vacation, that such nuisance exists, a temporary writ of
 22 injunction shall forthwith issue restraining the defendant
 23 from conducting or permitting the continuance of such
 24 nuisance until the conclusion of the trial. If a temporary
 25 injunction is prayed for, the court may issue an order

1 restraining the defendant and all other persons from
 2 removing or in any way interfering with the fixtures or
 3 other things used in connection with the violation of this
 4 act constituting such nuisance. No bond shall be required
 5 in instituting such proceedings. It shall not be necessary
 6 for the court to find the property involved was being
 7 unlawfully used as aforesaid at the time of the hearing, but
 8 on finding that the material allegations of the petition are
 9 true, the court shall order that no liquor or beer shall be
 10 manufactured, sold, or bartered in such room, house,
 11 building, boat, vehicle, structure, or place, or any part
 12 thereof. And upon judgment of the court ordering such
 13 nuisance to be abated, the court may order that the room,
 14 house, building, structure, boat, vehicle, or place shall
 15 not be occupied or used for one (1) year thereafter; but the
 16 court may, in its discretion, permit it to be occupied or
 17 used if the owner, lessee, tenant, or occupant thereof shall
 18 give bond with sufficient surety, to be approved by the
 19 court making the order, in the penal and liquidated sum of
 20 not less than five hundred dollars ~~(\$500.00)~~ (\$500), nor
 21 more than one thousand dollars ~~(\$1,000.00)~~ (\$1,000), payable
 22 to the state of Montana, and conditioned that liquor or beer
 23 will not thereafter be manufactured, sold or bartered
 24 therein or thereon, and that he will pay all fines, costs,
 25 and damages that may be assessed for any violations of this

1 ~~act code~~ upon said property." .

2 Section 72. Section 4-347, R.C.M. 1947, is renumbered
3 section 4-1-407, and is amended to read as follows:

4 "~~4-347~~ 4-1-407. Revenue to be paid to state
5 treasurer--disposition of revenue. Except as provided in
6 section ~~4-347.1~~ 4-1-408 of this ~~act code~~, all fees, charges,
7 taxes and revenues collected by or under authority of the
8 Montana ~~liquor-control-board department, under--the--Montana~~
9 ~~Beer--Act~~ shall be paid over to the state treasurer on or
10 before the tenth (10th) day of each and every month who
11 shall deposit said funds to the credit of the state general
12 fund."

13 Section 73. Section 4-347.1, R.C.M. 1947, is
14 renumbered section 4-1-408, and is amended to read as
15 follows:

16 "~~4-347.1~~ 4-1-408. Revenue allocation. All revenue
17 received from taxes on beer under sections ~~4-347~~ 4-1-404 and
18 ~~4-324~~ 4-1-405, R.C.M. 1947, over and above one dollar and
19 fifty cents (\$1.50) per barrel of thirty-one (31) gallons
20 shall be deposited with the state treasurer to the credit of
21 the incorporated cities and towns beer tax account in the
22 earmarked revenue fund. The state treasurer shall, monthly,
23 distribute this amount of money to the incorporated cities
24 and towns in the direct proportion that the population of
25 each city and town bears to the total population of all

1 incorporated cities and towns as shown in the latest
2 official federal census. For cities and towns incorporated
3 after the latest official federal census, the census shall
4 be determined as of the date of incorporation as evidenced
5 by the certificate of the incorporating officials of that
6 city or town. If a city or town disincorporates, it shall
7 cease to receive any funds under this section and the amount
8 previously distributed to the city or town shall be
9 distributed to the remaining incorporated cities and towns.
10 All funds received by cities and towns under this section
11 shall be expended for state purposes such as law
12 enforcement, maintenance of the transportation system, and
13 public health."

14 Section 74. Section 4-349, R.C.M. 1947, is renumbered
15 section 4-3-219, and is amended to read as follows:

16 "~~4-349~~ 4-3-219. Brewers and wholesalers not to supply
17 fixtures, etc., to retailers, except as specified--~~brewers~~
18 ~~not-to-be-interested-in-retailer-financially~~. (a) It shall
19 be unlawful for any brewer or wholesaler to lease, furnish,
20 give or pay for any premises, furniture, fixtures,
21 equipment, signs, or any other advertising matter or any
22 other property to any retail licensee, used or to be used in
23 the dispensation of beer in and about the interior or
24 exterior of the place of business of any licensed retailer
25 or furnish, give or pay for any repairs, improvements,

1 painting or decorating on or within such premises; provided,
2 however, that it shall be lawful for a brewer or wholesaler
3 to furnish, give or loan to a retail licensee:

4 1. Bottle openers, can openers and trays, with or
5 without advertising matter thereon;

6 2. Advertising matter or novelties, of a value of not
7 to exceed fifteen dollars ~~(\$15.00)~~ (\$15) in any calendar
8 year, to any one (1) retailer for display use on the
9 interior of said retailer's place of business; and

10 3. Not more than two (2) illuminated or electrical
11 signs, each of not more than six hundred thirty (630) square
12 inches in area, which signs may bear the name, brand name,
13 trade name, trade-mark or other designation indicating the
14 name of the manufacturer, and the place of manufacture, of
15 beer, for display by the retail licensee on and within the
16 interior of his place of business, or in the windows inside
17 the place of business of the licensed retailer, and only if
18 the particular brand of beer so advertised on such signs is
19 actually available for sale on the licensee's premises, at
20 the time of such display.

21 4. Maintenance or repair services on draft beer
22 equipment to keep it sanitary and in good working condition.

23 ~~(b) No brewer or wholesaler shall advance or loan~~
24 ~~money to, or furnish money for, or pay for or on behalf of~~
25 ~~any retailer, for any license or tax which may be required~~

1 ~~to be paid for any retailer, and no brewer or wholesaler~~
2 ~~shall be financially interested, either directly or~~
3 ~~indirectly, in the conduct or operation of the business of a~~
4 ~~retailer, as herein defined. A brewer or wholesaler shall~~
5 ~~be deemed to have such a financial interest within the~~
6 ~~meaning of this section if (1) such brewer or wholesaler~~
7 ~~owns or holds any interest in, or a lien or mortgage against~~
8 ~~the retailer or his premises, or (2) if such brewer or~~
9 ~~wholesaler is under any contract with a retailer concerning~~
10 ~~future purchases and/or sale of merchandise by one from, or~~
11 ~~to the other, (3) if any retailer holds an interest as a~~
12 ~~stockholder, or otherwise, in the business of the~~
13 ~~wholesaler.~~

14 ~~(c) No sale or delivery of beer shall be made to any~~
15 ~~retail licensee, except for cash paid within seven (7) days~~
16 ~~after the delivery thereof, and in no event shall any brewer~~
17 ~~or wholesaler extend more than seven (7) days' credit on~~
18 ~~account of such beer to a retail licensee, nor shall any~~
19 ~~retail licensee accept or receive delivery of such beer~~
20 ~~without agreement to pay in cash therefor within seven (7)~~
21 ~~days from delivery thereof. A correctly dated check which~~
22 ~~is honored upon presentment shall be considered as cash~~
23 ~~within the meaning of this act. Any extension or acceptance~~
24 ~~of credit in violation hereof shall be regarded and~~
25 ~~construed as rendering or receiving financial assistance.~~

1 ~~and the licenses of both brewers, wholesalers and retail~~
 2 ~~licensees involved in violation hereof shall be suspended or~~
 3 ~~revoked, as determined by the board in its discretion."~~

4 Section 75. There is a new section to be numbered
 5 4-3-220, R.C.M. 1947, which reads as follows:

6 4-3-220. Financial interest in retailers prohibited.
 7 No brewer or wholesaler shall advance or loan money to, or
 8 furnish money for, or pay for or on behalf of any retailer,
 9 for any license or tax which may be required to be paid for
 10 any retailer, and no brewer or wholesaler shall be
 11 financially interested, iether directly or indirectly, in
 12 the conduct or operation of the business of a retailer, as
 13 herein defined. A brewer or wholesaler shall be deemed to
 14 have such a financial interest within the meaning of this
 15 section if (1) such brewer or wholesaler owns or holds any
 16 interest in, or a lien or mortgagee against the retailer or
 17 his premises; or (2) if such brewer or wholesaler is under
 18 any contract with a retailer concerning future purchases
 19 and/or sale of merchandise by one from, or to the other; (3)
 20 if any retailer holds an interest as a stockholder, or
 21 otherwise, in the business of the wholesaler.

22 Section 76. There is a new section to be numbered
 23 4-3-221, R.C.M. 1947, which reads as follows:

24 4-3-221. Seven day credit limitation. No sale or
 25 delivery of beer shall be made to any retail licensee,

1 except for cash paid within seven (7) days after the
 2 delivery thereof, and in no event shall any brewer or
 3 wholesaler extend more than seven (7) days' credit on
 4 account of such beer to a retail licensee, nor shall any
 5 retail licensee accept or receive delivery of such beer
 6 without agreement to pay in cash therefor within seven (7)
 7 days from delivery thereof. A correctly dated check which
 8 is honored upon presentment shall be considered as cash
 9 within the meaning of this code. Any extension or
 10 acceptance of credit in violation hereof shall be regarded
 11 and construed as rendering or receiving financial
 12 assistance, and the licenses of both brewers, wholesalers
 13 and retail licensees involved in violation hereof shall be
 14 suspended or revoked, as determined by the department in its
 15 discretion.

16 Section 77. Section 4-358, R.C.M. 1947, is renumbered
 17 section 4-3-222, and is amended to read as follows:

18 "4-358 4-3-222. Limitations on advertising of beer. It
 19 shall be lawful to advertise beer containing not more than
 20 ~~four~~ seven per centum (4 7%) of alcohol by weight, as herein
 21 defined and regulated, subject to (a) the restrictions on
 22 brewers contained in section 4-349 4-3-219 of this act code,
 23 and subject to (b) the restrictions on retailers, to wit: No
 24 retail licensee ~~under the Montana Beer Act~~ shall display, or
 25 permit to be displayed, on the exterior portion or surface

1 of such retailer's place of business, or on the exterior
 2 portion or surface of any building of which said place of
 3 business is a part, or on any premises adjacent thereto,
 4 whether any of such premises be owned or leased by the
 5 retailer, any sign, poster or advertisement bearing the
 6 name, brand name, trade name, trade-mark or other
 7 designation indicating the manufacturer, brewer, wholesaler
 8 or place of manufacture, of any beer whatsoever."

9 Section 78. Section 4-401, R.C.M. 1947, is renumbered
 10 section 4-1-103, and is amended to read as follows:

11 "~~4-401~~ 4-1-103. Declaration of policy as to retail
 12 sale of liquor. It is hereby declared as the policy of the
 13 state that it is necessary to further regulate and control
 14 the sale and distribution within the state of alcoholic
 15 beverages, and to eliminate certain illegal traffic in
 16 liquor now existing, and to ensure the entire control of the
 17 sale of liquor in the Montana ~~liquor--control--board~~
 18 department of revenue, it is advisable and necessary, in
 19 addition to the operation of the state liquor stores now
 20 provided by law, that the said ~~board~~ department be empowered
 21 and authorized to grant licenses to persons qualified under
 22 this act code, to sell liquor purchased by them at state
 23 liquor stores at retail posted price in accordance with this
 24 act code and under rules and regulations promulgated by the
 25 said board department, and under its strict supervision and

1 control, and to provide severe penalty for the sale of
 2 liquor except by and in state liquor stores and by persons
 3 licensed under this act code. The restrictions, regulations
 4 and provisions contained in this act code are enacted by the
 5 legislature for the protection, health, welfare and safety
 6 of the people of the state."

7 Section 79. Section 4-403, R.C.M. 1947, is renumbered
 8 section 4-4-202, and is amended to read as follows:

9 "~~4-403~~ 4-4-202. ~~Issuance--of--retail-liquor-licenses--~~
 10 ~~limit-on-number-of-licenses--retail-wine-licenses--lapse-and~~
 11 ~~cancellation.~~ All-beverage license quota. (1) Except as
 12 otherwise provided by law, a license to sell liquor, beer
 13 and wine at retail, an all-beverages license, in accordance
 14 with the provisions of this act code and the regulations of
 15 the Montana ~~liquor-control-board~~ department of revenue, may
 16 be issued to any person who shall be approved by ~~a-majority~~
 17 ~~of-the-board~~ the department as a fit and proper person to
 18 sell liquor such beverages; provided, that ~~the-number-of~~
 19 ~~retail-liquor-licenses-which-the-board-may--issue--shall--be~~
 20 ~~determined-as-follows:~~

21 (a) ~~The~~ the number of ~~retail--liquor~~ all-beverages
 22 licenses that the ~~board~~ department may issue for premises
 23 situated within incorporated cities and incorporated towns
 24 and within a distance of five (5) miles from the corporate
 25 limits of such cities and towns shall be determined on the

1 basis of population as shown by the most recent official
 2 United States census authorized by Congress, to wit: In
 3 incorporated towns of five hundred (500) inhabitants or less
 4 and within a distance of five (5) miles from the corporate
 5 limits of such towns, not more than two (2) retail ~~liquor~~
 6 licenses; in incorporated cities or incorporated towns of
 7 more than five hundred (500) inhabitants and not over three
 8 thousand (3000) inhabitants and within a distance of five
 9 (5) miles from the corporate limits of such cities and
 10 towns, three (3) retail ~~liquor~~ licenses for the first one
 11 thousand (1000) inhabitants and one (1) retail ~~liquor~~
 12 license for each additional one thousand (1000) inhabitants;
 13 in incorporated cities of over three thousand (3000)
 14 inhabitants and within a distance of five (5) miles from the
 15 corporate limits thereof, five (5) retail ~~liquor~~ licenses
 16 for the first three thousand (3000) inhabitants and one (1)
 17 retail ~~liquor~~ license for each additional one thousand five
 18 hundred (1500) inhabitants. The number of the inhabitants
 19 in such cities and towns, ~~and-in-addition~~ exclusive of the
 20 number of inhabitants residing within a distance of five (5)
 21 miles from the corporate limits thereof, shall govern the
 22 number of retail ~~liquor~~ licenses that may be issued for use
 23 within such cities and towns and within a distance of five
 24 (5) miles from the corporate limits thereof; provided,
 25 however, that where two (2) or more incorporated

1 municipalities are situated within a distance of five (5)
 2 miles from each other, the total number of retail ~~liquor~~
 3 licenses that may be issued for use in both of such
 4 municipalities and within a distance of five (5) miles from
 5 their respective corporate limits, shall be determined on
 6 the basis of the combined population of both of such
 7 municipalities and shall not exceed the foregoing
 8 limitations. Notwithstanding the preceding sentence, the
 9 total population for determining the quota of a city may
 10 include, with the city's population, the population residing
 11 outside, but within five (5) miles of the city limits in a
 12 case where the number of persons residing outside but within
 13 five (5) miles of the city exceeds the number of persons
 14 residing within the city. Such a determination may be made
 15 only upon a special census taken by the department or its
 16 agent at the expense of the applicant for a license under
 17 this section. The said distance of five (5) miles from the
 18 corporate limits of any incorporated city or incorporated
 19 town shall be measured in a straight line from the nearest
 20 entrance of the premises proposed for licensing to the
 21 nearest corporate boundary of such city or town. Retail
 22 ~~liquor~~ all-beverages licenses of issue on the date of the
 23 passage and approval of this act code and which are in
 24 excess of the foregoing limitations shall be renewable, but
 25 no new licenses shall be issued in violation of such

1 limitations; provided that such limitations shall not
 2 prevent the issuance of a nontransferable and nonassignable
 3 (as to ownership only) retail ~~liquor~~ license to any post of
 4 a nationally chartered veterans' organization or any lodge
 5 of a recognized national fraternal organization, if such
 6 veterans' or fraternal organization has been in existence
 7 for a period of five (5) years or more prior to January 1,
 8 1949. No incorporated city or incorporated town may by
 9 ordinance restrict the number of licenses that the board
 10 department may issue; provided that no retail license may be
 11 issued by the board department for any premises situated
 12 within any zone of a city or town wherein the sale of liquor
 13 is prohibited by ordinance, a certified copy of which has
 14 been filed with the board department. The board department
 15 shall have discretion to deny the issuance of a retail
 16 license if it shall determine that the premises proposed for
 17 licensing are off regular police beats and cannot be
 18 properly policed by local authorities.

19 (b) ~~The~~ the number of retail ~~liquor~~ all-beverages
 20 licenses that the board department may issue for use at
 21 premises situated outside of any incorporated city or
 22 incorporated town and outside of the area within a distance
 23 of five (5) miles from the corporate limits thereof, shall
 24 be not more than one (1) license for each seven hundred
 25 fifty (750) population of the county, after excluding the

1 population of incorporated cities and incorporated towns in
 2 such county ~~and-the-population-residing-within-a-distance-of~~
 3 ~~five-(5)-miles-from-the-corporate-limits-thereof.~~

4 ~~(2)-From-and-after-February-1,-1949,-any-retail-license~~
 5 ~~issued--pursuant--to--this--act--not-actually-used-in-a-going~~
 6 ~~establishment-for-a-period-of-ninety--(90)--days--shall~~
 7 ~~automatically--lapse--Upon-determining-the-fact-of-nonuser~~
 8 ~~for-such-period-the-board-shall-cancel-such-license-of~~
 9 ~~record--and--no-portion-of-the-fee-paid-therefor-shall-be~~
 10 ~~refundable--The-provisions-of--this--subsection--shall--not~~
 11 ~~apply--to--the--license--of--any-licensee-whose-premises-are~~
 12 ~~operated-on-a-seasonal-basis-in-connection-with-a-bona--fide~~
 13 ~~dude--ranchy--park-hotel,-tourist-facility-or-like-business,~~
 14 ~~provided-such-licenses-has-secured--written--authority--from~~
 15 ~~the--board--to--close--his-licensed-premises-for-a-specified~~
 16 ~~period-of-greater--than--ninety--(90)--days--duration,-and~~
 17 ~~providing--further--that--should--the--liquor--control-board~~
 18 ~~determine-that-such-lapse-was-reasonably-beyond-the--control~~
 19 ~~of--the--licensee,-then--the--lapse-provision-set-out-above~~
 20 ~~shall-not-apply.~~

21 ~~(3)-Resort-licenses--It-is-the-intent-and-purpose--of~~
 22 ~~this-act--to--encourage--the-growth-of-quality-recreational~~
 23 ~~resort-facilities-in-undeveloped-areas-of-the-state--and--to~~
 24 ~~provide--for--the--orderly--growth--of-existing-recreational~~
 25 ~~sites-by-the-establishment--of--resort--areas--within--which~~

1 retail--liquor-licenses-may-be-issued-by-the-board-under-the
2 terms--and--as--more--particularly--prescribed--below----in
3 addition-to-the-licenses-as-otherwise-set-forth-in-this-act,
4 the--board--may--issue--resort--retail--liquor-licenses-in-a
5 resort-area;

6 For-the-purposes-of-this--section,--a--resort--area--is
7 defined----as----a---recreational---facility---meeting---the
8 qualifications--determined--by--the--board--as---hereinafter
9 provided;

10 The--board--shall--determine--that--the--area-for-which
11 licenses--are--to--be--issued--is--a---resort---area,---such
12 determination--to--be--made--under-and-pursuant-to-rules-and
13 regulations-to-be--promulgated--within--one--hundred--eighty
14 (180)--days--after-the-passage-and-approval-of-this-act,--In
15 addition-to-the-other-requirements-of--this--act,--a--resort
16 area--for--the-purposes-of-qualification-for-the-issuance-of
17 resort-retail-liquor-license--must--have--a--current--actual
18 valuation--of--resort--or-recreational-facilities, including
19 land-and-improvements-thereon, of-not-less-than-five-hundred
20 thousand--dollars--(\$500,000),--at-least--half---of---which
21 valuation--must--be-for-a-structure-or-structures-within-the
22 resort-area, and-must-be-under-the-sole-ownership-or-control
23 of-one-person-or-entity-at-the-time-of--the--filing--of--the
24 resort--area--plat--referred--to-in-the-next-paragraph. The
25 word-control-shall-mean-lands-held-under-lease,--option,--or

1 permit. Before-first-adopting-such-rules-and-regulations-in
2 regard--to--resort-liquor-licenses, the-board-shall-publish-a
3 notice--of--the--hearing--to--be--held--on--said--rules--and
4 regulations-in-a-regularly-published-newspaper-in-the-cities
5 of--Billings,--Bozeman,--Butter,--Great--Falls,--Helena,--Miles
6 City,--Kalispell-and-Missoula,--Montana,--said--publication--to
7 be--published--in--said--newspapers-at-least-once-a-week-for
8 four-consecutive-weeks, the-last-of-said-publications--being
9 at--least--ten--(10)--but-not-more-than-thirty--(30)--days-prior
10 to-the-date-set-for-said-hearing, which--shall--be--held--in
11 Helena,--Montana,--at--a--time--and--place-designated-by-the
12 board;

13 The-resort--area--must--be--determined--by--the--resort
14 developer--or--landowner--by-a-plat-setting-forth-the-resort
15 boundaries-designating-the-ownership-of-the-lands-within-the
16 resort-area-which--plat--must--be--verified--by--the--resort
17 developer--or--landowner,--and-filed-with-the-board-prior-to
18 the-filing-of-any-applications-by-individuals--for--licenses
19 within--the--resort--area. Such-plat-must-show-the-location
20 and-general-design-of-the-buildings, and-other--improvements
21 to--be--built--in--said--area--in-which-resort-retail-liquor
22 licenses-are-to-or-may-be-located. A-master-plan-for--the
23 development--of--the--said--area--may-be-filed-by-the-resort
24 developer-in-satisfaction-of-this-section;

25 Upon-such-filing-the-board-shall-forthwith--schedule--a

1 public--hearing--to-be-held-in-Helenay-Montana--to-determine
 2 whether-the-facility-proposed-by--the--resort--developer--or
 3 landowner--is--a-resort-area-within-the-meaning-of-the-rules
 4 and-regulations-of-the-board--At--least--thirty--{30}--days
 5 prior--to--the--date-of-the-hearing--the-board-shall-publish
 6 notice--thereof--with-a-description-of--the--location--of--the
 7 proposed--resort-area-in-a-newspaper-published-in-the-county
 8 or-counties-in-which-the-resort-is-located--once-a-week--for
 9 four--{4}--consecutive--weeks--Each--resort--developer--or
 10 landowner-shall--at-the-time-of-filing-his-application--pay
 11 to-the-board-an-amount-sufficient-to-cover-the-costs-of-said
 12 publication--Persons-may-present-statements-to-the-board-at
 13 the-hearing-in-person-or-in-writing-in-opposition-or-support
 14 of--the--plat--Within--thirty--{30}--days-of-the-hearing-the
 15 board-shall-accept-or-reject--the--plat--If--rejected--the
 16 board--must--state-its-reasons-and-set-forth-the-conditions,
 17 if-any--under-which--the--plat--will--be--accepted--and--the
 18 decision-of-the-board-may-be-reviewed-pursuant-to-the-review
 19 procedure-set-forth-in-section-4-425-herein.

20 Once--filed--with-the-board--the-boundaries-of-a-resort
 21 may-not-be-changed-without-full-hearing--as--above--provided
 22 and-the-prior-approval-of-the-board--which-approval-shall-be
 23 according-to-public-convenience-and-necessity.

24 When--the--board-has-accepted-a-plat-and-a-given-resort
 25 area-has-been-determined--applications--may--then--be--filed

1 with--the-board-by-persons-for-the-issuance-of-resort-retail
 2 liquor-licenses-within-the-said-resort-area--Each-applicant
 3 must-submit-plans-showing-the-location--appearance-and-floor
 4 plan-of-the-premises-for-which-application-for-a-license--is
 5 made.

6 If--an--applicant--otherwise--qualifies--for--a--resort
 7 license-but--the--premises--to--be--licensed--are--still--in
 8 construction--or--are--otherwise--incomplete-at-the-time-of
 9 such-application--the-board-shall--issue--a--letter--stating
 10 that--the--license--will--be--issued--at--such--time--as-the
 11 qualifications--for--a--licensed--premises--have--been--met
 12 setting--forth-such-time-limitations-and-requirements-as-the
 13 board-may-establish.

14 In-addition-to-the-restrictions-on-sale-or-transfer-of
 15 a--license--as--provided--in-section-4-410-herein--no-resort
 16 retail--liquor--license--may--be--sold--or--transferred--for
 17 operation--at--a--location--outside-of-the-boundaries-of-the
 18 resort-area.

19 The-annual-fee-for-resort-retail-liquor-licenses-within
 20 a-given-resort-area-shall-be-two-thousand--dollars--{2,000}
 21 for-each-such-license.

22 A--resort-retail-liquor-license-shall-not-be-subject-to
 23 the-quota-limitations-set-forth-in--section--4-403--{1}--{a}
 24 above--and-a-resort-retail-liquor-license-shall-be-issued-by
 25 the-board-on-the-basis-that-the-board--has--determined--that

1 such---license---is---justified---by---public---convenience---and
 2 necessity,---following---a---hearing---as---provided---in---section
 3 4-407.1,

4 If---any---clause,---sentence,---paragraph,---section,---or---any
 5 part-of-this-act---shall---be---declared---and---adjudged---to---be
 6 invalid---and/or---unconstitutional,---such---invalidity---of
 7 unconstitutionality---shall---not---affect,---impair,---invalidate---or
 8 nullify---the---remainder---of---this---act."

9 Section 80. There is a new section to be numbered
 10 4-4-203, R.C.M. 1947, which reads as follows:

11 4-4-203. Lapse of license for nonuse. From and after
 12 February 1, 1949, any retail license issued pursuant to this
 13 code (including any retail license to sell beer for
 14 off-premises consumption), not actually used in a going
 15 establishment for a period of ninety (90) days, shall
 16 automatically lapse. Upon determining the fact of nonuser
 17 for such period the department shall cancel such license of
 18 record and no portion of the fee paid therefor shall be
 19 refundable. The provisions of this subsection shall not
 20 apply to the license of any licensee whose premises are
 21 operated on a seasonal basis in connection with a bona fide
 22 dude ranch, resort, park hotel, tourist facility or like
 23 business, provided such licensee has secured written
 24 authority from the department to close, has licensed
 25 premises for a specified period of greater than ninety (90)

1 days' duration, and providing further that should the
 2 department determine that such lapse was reasonably beyond
 3 the control of the licensee, then the lapse provision set
 4 out above shall not apply.

5 Section 81. There is a new section to be numbered
 6 4-4-204, R.C.M. 1947, which reads as follows:

7 4-4-204. Resort licenses. It is the intent and
 8 purpose of this section to encourage the growth of quality
 9 recreational resort facilities in undeveloped areas of the
 10 state and to provide for the orderly growth of existing
 11 recreational sites by the establishment of resort areas
 12 within which retail liquor licenses may be issued by the
 13 department under the terms and as more particularly
 14 prescribed below. In addition to the licenses as otherwise
 15 set forth in this act, the department may issue resort
 16 retail liquor licenses in a resort area.

17 For the purposes of this section, a resort area is
 18 defined as a recreational facility meeting the
 19 qualifications determined by the department as hereinafter
 20 provided.

21 The department shall determine that the area for which
 22 licenses are to be issued is a resort area, such
 23 determination to be made under and pursuant to rules and
 24 regulations to be first promulgated on or before December
 25 31, 1975. In addition to the other requirements of this

1 code, a resort area for the purposes of qualification for
2 the issuance of resort retail liquor license must have a
3 current actual valuation of resort or recreational
4 facilities, including land and improvements thereon, of not
5 less than five hundred thousand dollars (\$500,000), at least
6 half of which valuation must be for a structure or
7 structures within the resort area, and must be under the
8 sole ownership or control of one person or entity at the
9 time of the filing of the resort area plat referred to in
10 the next paragraph. The word control shall mean lands held
11 under lease, option, or permit. Before first adopting such
12 rules and regulations in regard to resort liquor licenses,
13 the department shall publish a notice of the hearing to be
14 held on said rules and regulations in a regularly published
15 newspaper in the cities of Billings, Bozeman, Butte, Great
16 Falls, Helena, Miles City, Kalispell and Missoula, Montana,
17 said publication to be published in said newspapers at least
18 once a week for four consecutive weeks, the last of said
19 publications being at least ten (10) but not more than
20 thirty (30) days prior to the date set for said hearing,
21 which shall be held in Helena, Montana, at a time and place
22 designated by the department.

23 The resort area must be determined by the resort
24 developer or landowner by a plat setting forth the resort
25 boundaries designating the ownership of the lands within the

1 resort area which plat must be verified by the resort
2 developer or landowner, and filed with the department prior
3 to the filing of any applications by individuals for
4 licenses within the resort area. Such plat must show the
5 location and general design of the buildings, and other
6 improvements to be built in said area in which resort retail
7 liquor licenses are to, or may, be located. A master plan
8 for the development of the said area may be filed by the
9 resort developer in satisfaction of this section.

10 Upon such filing the department shall forthwith
11 schedule a public hearing to be held in Helena, Montana, to
12 determine whether the facility proposed by the resort
13 developer or landowner is a resort area within the meaning
14 of the rules and regulations of the department. At least
15 thirty (30) days prior to the date of the hearing, the
16 department shall publish notice thereof with a description
17 of the location of the proposed resort area in a newspaper
18 published in the county or counties in which the resort is
19 located, once a week for four (4) consecutive weeks. Each
20 resort developer or landowner shall, at the time of filing
21 his application, pay to the department an amount sufficient
22 to cover the costs of said publication. Persons may present
23 statements to the department at the hearing in person or in
24 writing in opposition or support of the plat. Within thirty
25 (30) days of the hearing the department shall accept or

1 reject the plat. If rejected the department must state its
2 reasons and set forth the conditions, if any, under which
3 the plat will be accepted and the decision of the department
4 may be reviewed pursuant to the review procedure set forth
5 in section 4-4-402.

6 Once filed with the department, the boundaries of a
7 resort may not be changed without full hearing as above
8 provided and the prior approval of the department, which
9 approval shall be according to public convenience and
10 necessity.

11 When the department has accepted a plat and a given
12 resort area has been determined, applications may then be
13 filed with the department by persons for the issuance of
14 resort retail liquor licenses within the said resort area.
15 Each applicant must submit plans showing the location,
16 appearance and floor plan of the premises for which
17 application for a license is made.

18 If an applicant otherwise qualifies for a resort
19 license but the premises to be licensed are still in
20 construction, or are otherwise incomplete and the time of
21 such application, the department shall issue a letter
22 stating that the license will be issued at such time as the
23 qualifications for a licensed premises have been met,
24 setting forth such time limitations and requirements as the
25 department may establish.

1 In addition to the restrictions on sale or transfer of
2 a license as provided in section 4-4-206 herein, no resort
3 retail liquor license may be sold or transferred for
4 operation at a location outside of the boundaries of the
5 resort area.

6 The annual fee for resort retail liquor licenses within
7 a given resort area shall be two thousand dollars (\$2,000)
8 for each such license.

9 A resort retail liquor license shall not be subject to
10 the quota limitations set forth in section 4-4-202 above and
11 a resort retail liquor license shall be issued by the
12 department on the basis that the department has determined
13 that such license is justified by public convenience and
14 necessity, following a hearing as provided in section
15 4-4-302.

16 Section 82. Section 4-406, R.C.M. 1947, is renumbered
17 section 4-4-404, and is amended to read as follows:

18 "4-406 4-4-404. Fee for and expiration of licenses.
19 Effective July 1, 1944, and at the same date of each year
20 thereafter, the Montana ~~liquor-control-board~~ department of
21 revenue shall issue licenses for the retail sale of beer
22 ~~and/or alcoholic beverages~~ liquor on an annual basis, and at
23 such fees as are prescribed by law, and such licenses shall
24 expire at midnight of June 30th of the succeeding year.
25 ~~Provided--that--when--the--applicant--shall--have--had--a--beer~~

~~license-or-beer-and-liquor-licenses-for-1943, he--shall--pay
the-fees-required-for-such-license-or-licenses-for-the-first
half--of-1944-before-he-shall-be-qualified-to-be-issued-such
license-or-licenses-for-the-year-commencing-June--30--1944.~~
The department shall notify each applicant for an original
license or renewal that he should inform himself of
applicable provisions of federal law which may require a
permit from a federal agency."

Section 83. Section 4-407, R.C.M. 1947, is renumbered
section 4-4-301, and is amended to read as follows:

~~"4-407 4-4-301.~~ Application for license--penalty for
false statements. Prior to the issuance of a license as
herein provided, the applicant shall file with the Montana
~~liquor-control-board~~ department of revenue an application in
writing, signed by the applicant, and containing such
information and statements relative to the applicant and the
premises where the ~~liquor~~ alcoholic beverage is to be sold,
as may be required by the Montana-liquor-board department.

The application shall be verified by the affidavit of
the person making the same before a person authorized to
administer oaths. If any false statement is made in any
part of said application, the applicant, or applicants,
shall be deemed guilty of a misdemeanor and upon conviction
thereof the license, if issued, shall be revoked and the
applicant, or applicants, subjected to the penalties

provided by law."

Section 84. Section 4-407.1, R.C.M. 1947, is
renumbered section 4-4-302, and is amended to read as
follows:

~~"4-407.1 4-4-302.~~ Notice of application--publication--
protest. When an application has been filed with the Montana
~~liquor-control-board~~ department of revenue for a license to
sell ~~liquor~~ alcoholic beverages at retail, or to transfer
such license, the ~~board~~ department shall promptly publish in
a newspaper of general circulation in the city, town or
county from whence such application shall come, a notice
that such applicant has made application for such license,
and that protests against the issuance of a license to the
applicant will be heard at a time and place stated in the
notice, which shall be ~~at-a-special-or-regular-meeting-of~~
~~the-Montana-liquor-control-board~~ in the city of Helena,
Montana. Notice of application for a new license shall be
published once a week for four (4) consecutive weeks.
Notice of application for transfer of a license shall be
published once a week for two (2) consecutive weeks. Notice
may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL LIQUOR

ALL BEVERAGE LICENSE

Notice is hereby given that on the day of,
19.., one (name of applicant) filed an application for a

1 retail ~~liquor~~ all beverage license with the Montana ~~liquor~~
2 ~~control-board~~ department of revenue, to be used at (describe
3 location of premises where license is to be sold), and
4 protests, if any there be, against the issuance of such
5 license will be heard at the hour of --M, on the day
6 of, 19..., at the office of the Montana ~~liquor--control~~
7 board department of revenue, in Helena, Montana.

8 Dated

9 Signed

10 ADMINISTRATOR

11 No license shall be issued until on or after the date
12 set in the notice for hearing protests. Nor shall a license
13 under this act code be issued if the said Montana ~~liquor~~
14 ~~control--board~~ department of revenue shall find from the
15 evidence at said hearing that the welfare of the people
16 residing in the vicinity of the place for which such license
17 is desired will be adversely and seriously affected, or that
18 the purposes of the Montana-Retail-Liquor-License-Act this
19 code will not be carried out by the issuance of such
20 license. Each applicant shall, at the time of filing his
21 application, pay to the Montana ~~liquor--control---~~board
22 department of revenue, an amount sufficient to cover the
23 costs of publishing said notice."

24 Section 85. Section 4-408, R.C.M. 1947, is renumbered
25 section 4-4-303, and is amended to read as follows:

1 "4-408 4-4-303. Investigation of application. Upon
2 receipt of an a completed application for a license under
3 this act code, accompanied by the necessary license fee and
4 bond, the board department of revenue shall within thirty
5 (30) days thereafter, cause to be made a thorough
6 investigation of all matters pertaining thereto, and shall
7 determine whether such applicant is qualified to receive a
8 license and his premises are suitable for the carrying on of
9 the business, and whether the requirements of this act code
10 and the rules and regulations promulgated by the board
11 department are met and complied with."

12 Section 86. Section 4-408.1, R.C.M. 1947, is
13 renumbered section 4-4-304, and is amended to read as
14 follows:

15 "4-408 4-4-304. Fingerprints required of licensees.
16 All applicants for a Montana retail ~~liquor~~ all beverage or
17 beer license, including corporate officers and managers, may
18 be required by the department of revenue, when applying for
19 said license to have their fingerprints taken for use in
20 determining the eligibility of the applicant for such
21 license."

22 Section 87. Section 4-409.1, R.C.M. 1947, is
23 renumbered section 4-4-106, and is amended to read as
24 follows:

25 "4-409:1 4-4-106. Special permits to sell ~~liquor~~

alcoholic beverages--application and issuance--fee. Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act, shall in the discretion of the board department of revenue, without notice or hearing as provided in section 4-4-302, be entitled to a special permit to sell liquor all alcoholic beverages at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization, shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of ten dollars ~~(\$10.00)~~ (\$10).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the board department shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year. ~~Such post or lodge must have either a retail license or special permit to sell beer before being entitled to a special permit to sell liquor.~~

Section 88. Section 4-410, R.C.M. 1947, is renumbered section 4-4-206, and is amended to read as follows:

"4-4-206. Contents of license -- posting -- privilege -- transfer -- expiration. (1) Every license issued under this act code shall set forth the name of the person to whom issued, the location by street and number, or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the board department shall deem necessary. If the licensee is a partnership or if more than one person has any interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein the business authorized under the license is conducted and such license shall be exhibited upon request to any authorized representative of the board department or to any peace officer of the state of Montana.

(2) Any license issued under the provisions of this act code shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license, unless sooner revoked or suspended. A license may be transferred to the executor or administrator of the estate of any deceased licensee when such estate consists in whole or in part of the business of selling liquor under a license and in such event the license

1 may descend or be disposed of with the business to which it
2 is applicable under appropriate probate proceedings.

3 (3) In the event of a major loss or damage to licensed
4 premises by unforeseen natural causes, or in case of
5 expiration of lease of the licensed premises, or in the
6 event of eviction or increase of rent by the landlord, in
7 case of rented, licensed premises, or in case of proposed
8 removal of license to premises as substantially suited for
9 the retail liquor business as the premises vacated, the
10 licensee may apply to the board department for a transfer of
11 the license to a different premises, the board department
12 may in its discretion permit a transfer in such cases if it
13 appears to the board department that such a transfer is
14 required to do justice to the licensee applying for the
15 transfer. The board department shall in no event, nor for
16 any cause, permit a transfer to a different premises where
17 the sanitary, health and service facilities are less
18 satisfactory than such facilities which exist or had existed
19 at the premises from which the transfer is proposed to be
20 made.

21 (4) Upon a bona fide sale of the business operated
22 under any license the license may be transferred to a
23 qualified purchaser. No transfer of any license as to
24 person or location shall be effective unless and until
25 approved by the board department and any licensee or

1 transferee or proposed transferee who operates or attempts
2 to operate under any supposedly transferred license prior to
3 the approval of such transfer by the board department,
4 endorsed upon the license in writing, shall be considered as
5 operating without a license and the license affected may be
6 revoked or suspended by the board department. ~~The board~~
7 ~~shall not in any event permit the transfer of any license~~
8 ~~beyond the quota area within which such license was~~
9 ~~originally issued, any such license which is not within a~~
10 ~~quota area may not be transferred to any premises within a~~
11 ~~quota area.~~

12 (a) A license may be transferred to a new ownership
13 and to a location outside the quota area for which it was
14 originally issued only when the following criteria are met:

15 (i) the total number of all-beverages licenses in the
16 original quota area exceeded the quota for that area by at
17 least twenty-five percent (25%) in the most recent census;
18 and

19 (ii) the total number of all-beverages licenses in the
20 quota area to which the license would be transferred did not
21 exceed that area's quota by more than twenty-five percent
22 (25%) in the most recent census; and

23 (iii) the department finds, after a public hearing,
24 that the public convenience and necessity would be served by
25 such a transfer.

(b) A license transferred between quota areas under this section may not be pledged as security or be transferred, except for a transfer by inheritance upon the death of the licensee. If the licensee is a corporation or a business entity other than a natural person, ownership interests in the licensee may not be pledged as security or transferred except by inheritance if the value of such ownership interests exceed the fair market value of the real property and inventory owned by the licensee.

Except as above provided, no license shall be transferred or sold, nor shall it be used for any place of business not described in the license, provided however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the board department, must be endorsed on the license. All licenses shall expire at midnight of June thirtieth of each year."

Section 89. Section 4-411, R.C.M. 1947, is renumbered section 4-4-207 and is amended to read as follows:

"4-411 4-4-207. Limit one license to person ~~---beer~~ licensee, when required -- business in name of licensee. No person shall be granted more than one all-beverages license in any year. ~~No--person, club, or fraternal organization~~ shall be entitled to a license under this act unless such ~~person, club, or fraternal organization shall have a beer~~

~~license issued under the laws of Montana. No business may be~~
~~carried on under any license issued under this chapter~~
~~except in the name of the licensee."~~

Section 90. Section 4-412, R.C.M. 1947, is renumbered section 4-4-108, and is amended to read as follows:

"4-412 4-4-108. ~~Persons---disqualified--for--license~~
License as privilege -- criteria for decision on
application. No license shall be issued by the board to

~~1.---A person who has been convicted of being the keeper~~
~~or is keeping a house of ill fame;~~

~~2.---A person who has been convicted of pandering or~~
~~other crime or misdemeanor opposed to decency and morality,~~
~~under the laws of the federal government or any state of the~~
~~United States;~~

~~3.---A person whose license issued under this act has~~
~~been revoked for cause;~~

~~4.---A person who at the time of application for renewal~~
~~of any license issued hereunder would not be eligible for~~
~~such license upon a first application;~~

~~5.---A person who is not qualified or whose premises do~~
~~not conform to the provisions of this act or with the rules~~
~~and regulations promulgated by the board;~~

~~6.---A person who is not a citizen of the United States~~
~~and who has not been a resident of the state of Montana for~~
~~at least one (1) year immediately preceding the filing of~~

the-application-for-license.

~~7.---A-person-who-is-not-the-owner-and-operator-of-the business.~~

A license under this code is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled. The department must find, in every case where it makes an order for the issuance of a new license or for the approval of the transfer of a license, that:

(1) the applicant is financially capable, with no ownership interest of his own or of any member of his immediate family in any other establishment licensed under this chapter for all-beverages sales, and without financing from or any affiliation to a manufacturer, bottler, or distributor of beer, wine or liquor;

(2) the applicant is a resident of the state and is qualified to vote in a state election; and

(3) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments."

Section 91. Section 4-413, R.C.M. 1947, is renumbered section 4-3-306, and is amended to read as follows:

"~~4-413~~ 4-3-306. Persons to whom ~~liquor~~ alcoholic

beverage may not be sold or given. (1) No licensee or his or her employee or employees, nor any other person, shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any ~~liquor, beer or wine~~ alcoholic beverage to:

~~1. (a)~~ Any person under the age of eighteen (18) years.

~~2. (b)~~ Any intoxicated person or any person actually, apparently or obviously intoxicated.

~~3.---A-habitual-drunkard;~~

~~4.---An-interdicted-person;~~

~~5. (2)~~ Any minor, or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining ~~liquor, beer or wine~~ an alcoholic beverage from such licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section ~~4-439~~ 94-5-610 provided, however, that nothing herein contained shall be construed as authorizing or permitting the sale of ~~liquor, beer or wine~~ an alcoholic beverage to any person in violation of any federal law."

Section 92. Section 4-415, R.C.M. 1947, is renumbered section 4-4-107, and is amended to read as follows:

"~~4-415~~ 4-4-107. ~~Restrictions--on-proximity-of-premises to-churches-and-schools.~~ Proximity to churches and schools restricted. ~~No--license--shall--be-granted-for-any-premises~~

which--shall--be--on--the--same--street--or--avenue--and--within--six
 hundred--feet--of--a--building--occupied--exclusively--as--a--church,
 synagogue--or--other--place--of--worship,--or--school,--except--a
 commercially--operated--school,--the--measurements--to--be--taken
 in--a--straight--line--from--the--center--of--the--nearest--entrance
 of--such--school,--church,--synagogue--or--other--place--of--worship
 to--the--center--of--the--nearest--entrance--of--the--premises--to--be
 licensed,--except,--however,--that--no--license--shall--be--denied
 because--such--restriction--may--apply--to--any--premises--so
 located---which---are---maintained---as---a---bona--fide--hotel,
 restaurant,--railway--car,--club--or--fraternal--organization--or
 society--except--similar--places--of--business--established--and--in
 actual--operation--for--one--year--prior--to--the--passage--and
 approval--of--this--act. A retail licensee may not extend or
relocate his premises within six hundred (600) feet of and
on the same street as a building used exclusively as a
church, synagogue, or other place of worship, or as a school
other than a commercially operated or post-secondary school.
This distance shall be measured in a straight line from the
center of the nearest entrance of the place of worship or
school to the nearest entrance of the licensee's premises.
This section is a limitation upon the department's licensing
authority. However, the department may renew a license for
any establishment located in violation of this section if
the establishment was either located on the site before the

place of worship or school opened, or located in a bona fide
hotel, restaurant, or fraternal organization building at the
site since January 1, 1937."

Section 93. Section 4-416, R.C.M. 1947, is renumbered
 section 4-2-204, and is amended to read as follows:

"4-416 4-2-204. Beard Department to sell to licensees
 -- posted price. The board department is hereby authorized
 to sell through its stores all kinds of liquor, wine and
 cordials kept in stock to licensees licensed under this act
code at the posted price thereof in the store in which said
 liquor is sold. All sales shall be upon a cash basis. The
 posted price as used herein shall mean the retail price of
 such liquor as fixed and determined by the Montana--liquor
control--board department of revenue and in addition thereto
 an excise tax as in this act provided."

Section 94. Section 4-417, R.C.M. 1947, is renumbered
 section 4-1-403, and is amended to read as follows:

"4-417 4-1-403. Excise liquor tax--collection. The
Montana--liquor-control-board department of revenue is hereby
 authorized and directed to charge, receive and collect at
 the time of the sale and delivery of any liquor as
 authorized under any provision of the laws of the state of
 Montana an excise tax at the rate of sixteen per centum
 (16%) of the retail selling price on all liquor so sold and
 delivered. The Montana liquor-control-board department of

1 revenue shall retain the amount of such excise tax received
 2 in a separate account and shall deposit with the state
 3 treasurer, to the credit of the general fund, such sums so
 4 collected and received not later than the tenth (10th) day
 5 of each and every month."

6 Section 95. Section 4-418, R.C.M. 1947, is renumbered
 7 section 4-2-205, and is amended to read as follows:

8 "~~4-418~~ 4-2-205. Duplicate invoices of sales required.
 9 The state liquor store shall upon each and every sale of
 10 liquor to any licensee, issue a duplicate invoice of the
 11 liquor purchased as provided by ~~said-board~~ the department, a
 12 copy of which shall be delivered to the licensee and one
 13 copy retained at such store. The invoice shall show the
 14 date of purchase, name of employee making the sale, the
 15 quantity of each kind of liquor purchased, the price paid
 16 therefor, the name of the licensee and the number of the
 17 license, with such other information as may be required by
 18 the board department. The licensee shall keep and retain
 19 his duplicate invoice of all purchases made by him from the
 20 state liquor store, which shall at all times be subject to
 21 inspection by the duly authorized officers, agents and
 22 employees of the board department."

23 Section 96. Section 4-419, R.C.M. 1947, is renumbered
 24 section 4-6-102, and is amended to read as follows:

25 "~~4-419~~ 4-6-102. Sale of liquor not purchased from

1 state store forbidden -- penalty. It shall be unlawful for
 2 any licensee to sell or keep for sale and/or have on his
 3 premises for any purpose whatever, any liquor except that
 4 purchased from the state liquor store, and any licensee
 5 found in possession of, or selling and keeping for sale, any
 6 liquor which was not purchased from a state liquor store,
 7 shall, upon conviction, be fined not less than five hundred
 8 dollars ~~(\$500.00)~~ (\$500) nor more than fifteen hundred
 9 dollars ~~(\$1500.00)~~ (\$1500), or by imprisonment for not less
 10 than three (3) months nor more than one (1) year, or both
 11 such fine and imprisonment, and if the board department
 12 shall be satisfied that any such liquor was knowingly sold
 13 or kept for sale within the licensed premises by such
 14 licensee, or by his agents, servants or employees, it shall
 15 be mandatory that said board department immediately revoke
 16 the license of said licensee."

17 Section 97. Section 4-420, R.C.M. 1947, is renumbered
 18 section 4-4-407, and is amended to read as follows:

19 "~~4-420~~ 4-4-407. Penalty for sale of alcoholic ~~liquor~~
 20 beverage without license. Any person, who has not been
 21 issued a license under this act code, who shall sell or keep
 22 for sale any alcoholic ~~liquor~~ beverage, shall be guilty of a
 23 felony and upon conviction thereof shall be fined not less
 24 than one thousand dollars ~~(\$1000.00)~~ (\$1000) nor more than
 25 five thousand dollars ~~(\$5,000.00)~~ (\$5,000), or be imprisoned

1 in the state prison for not less than one (1) nor more than
2 five (5) years, or both such fine and imprisonment."

3 Section 98. Section 4-421, R.C.M. 1947, is renumbered
4 section 4-3-307, and is amended to read as follows:

5 "~~4-421~~ 4-3-307. Sale of liquor at less than posted
6 price forbidden. It shall be unlawful for any licensee under
7 the provisions of this act code to resell any liquor
8 purchased by such licensee from a state liquor store or the
9 state of Montana for a sum less than the posted price
10 established by the said store and paid by the licensee
11 therefor."

12 Section 99. Section 4-422, R.C.M. 1947, is renumbered
13 section 4-1-305, and is amended to read as follows:

14 "~~4-422~~ 4-1-305. Employees of ~~beard~~ liquor division not
15 to deal in liquor. No member or employee of the ~~beard~~ liquor
16 division of the department, including those engaged in the
17 sale of liquor at the various state liquor stores, shall be
18 directly or indirectly engaged in dealing in liquor whether
19 as owner, part owner, member of a syndicate, shareholder or
20 otherwise, whether for his own benefit or in a fiduciary
21 capacity for others."

22 Section 100. Section 4-423, R.C.M. 1947, is
23 renumbered section 4-6-206, and is amended to read as
24 follows:

25 "~~4-423~~ 4-6-206. Officers may seize illicit ~~liquor~~

1 alcoholic beverages -- forfeiture. Any sheriff, police
2 officer, or ~~inspector~~ investigator appointed under this act
3 code, who shall find any alcoholic beverages, beverage
4 ~~liquor--or-moonshine-which-is~~ kept or held by any person for
5 sale or other disposition in violation of this act code, may
6 forthwith seize and remove the same, and keep the same as
7 evidence, and upon conviction of a person for violation of
8 the provisions hereof, the ~~said--liquor~~ alcoholic beverage
9 and all packages containing the same shall be forfeited to
10 the state of Montana, and in addition the person so
11 violating the law shall be subject to the penalties herein
12 prescribed."

13 Section 101. Section 4-428, R.C.M. 1947, is
14 renumbered section 4-6-204, and is amended to read as
15 follows:

16 "~~4-428~~ 4-6-204. Officers may examine premises. The
17 ~~beard~~ department of revenue or any duly authorized
18 representative thereof, or the sheriff of any county, shall
19 have the right at any time to make an examination of the
20 premises of ~~such a retail~~ licensee as to whether the law of
21 Montana and the rules and regulations of the ~~said-beard~~
22 department are being complied with, and shall also have a
23 right to inspect cars or aircraft of any railway common
24 carrier system licensed under act this code."

25 Section 102. Section 4-429, R.C.M. 1947, is

1 renumbered section 4-4-405, and is amended to read as
2 follows:

3 "4-429 4-4-405. Renewal of suspended licenses. After
4 suspension or revocation of a license the board department
5 shall have the power to renew the same if in its discretion
6 a proper showing therefor has been made."

7 Section 103. Section 4-430, R.C.M. 1947, is
8 renumbered section 4-4-406, and is amended to read as
9 follows:

10 "4-430 4-4-406. City and county licenses--fees. The
11 city council of any incorporated town or city, or the county
12 commissioners outside of any incorporated town or city, may
13 provide for the issuance of licenses to persons to whom a
14 retail license has been issued under the provisions of this
15 act code, and may fix license fees thereof, not to exceed a
16 sum equal to fifty per cent (50%) of the license fee
17 collected by the board department from such licensee under
18 this act code."

19 Section 104. Section 4-439, R.C.M. 1947, is
20 renumbered section 4-6-404, and is amended to read as
21 follows:

22 "4-439 4-6-404. Penalty for violating act--revocation
23 of license. Any person violating any of the provisions of
24 this act code, shall upon conviction thereof, be deemed
25 guilty of a misdemeanor and punishable by such fine or

1 imprisonment, or both, as provided ~~by--law~~ in section
2 95-2206.3, R.C.M. 1947, except as is herein otherwise
3 provided. If any such retail licensee is convicted of any
4 offense under this act code his license shall be immediately
5 revoked, or in the discretion of the board department
6 ~~suspended-temporarily-for-a-time-to-be-determined-by-the~~
7 board such other sanction imposed as may be authorized under
8 section 4-4-402. Further, if any person under the age of
9 eighteen (18) is convicted of an offense under this act code
10 he shall be subject to a one hundred dollar (\$100) fine or
11 thirty (30) days in confinement. It shall be further
12 mandatory under the provisions of this act code that all
13 such licensees display in a prominent place in his premises
14 a placard as issued by the board department stating fully
15 the consequences for violations by persons under the age of
16 eighteen (18) years of the provisions of this act code.

17 Any person who invites a person under the age of
18 eighteen (18) years into a public place where liquor an
19 alcoholic beverage is sold and treats, gives or purchases
20 liquor an alcoholic beverage for such person, or permits
21 such person in a public place where liquor an alcoholic
22 beverage is sold to treat, give or purchase liquor for him,
23 or holds out such person to be over the age of eighteen (18)
24 years to the owner of the liquor establishment, or his or
25 her employee or employees, shall be guilty of a

1 misdemeanor."

2 Section 105. Section 4-440, R.C.M. 1947, is
3 renumbered section 4-1-106, and is amended to read as
4 follows:

5 "4-440 4-1-106. Saving clause--scope of act code. If
6 any clause, sentence, paragraph, section or any part of this
7 act code shall be declared and adjudged to be invalid and/or
8 unconstitutional, such invalidity or unconstitutionality
9 shall not affect, impair, invalidate or nullify the
10 remainder of this act code. This act code shall apply to
11 the Montana ~~liquor-control-board~~ department of revenue as
12 now composed and existing, and to any board or commission or
13 other entity which may hereafter succeed the ~~above-said~~
14 ~~board department~~."

15 Section 106. Section 4-507, R.C.M. 1947, is
16 renumbered section 4-5-102, and is amended to read as
17 follows:

18 "4-507 4-5-102. Duties of the county clerk and
19 recorder. Upon making application to the county clerk and
20 recorder for an identification card, the applicant must
21 apply in person before the county clerk and recorder, who
22 shall ascertain and receive from the applicant:

- 23 1. The true and full name of the applicant;
- 24 2. The date of birth of the applicant, provided,
25 however, it shall be within the discretion of the officer to

1 require proof of the date of birth with a certified copy of
2 his or her birth certificate;

3 3. Place of birth of the applicant;

4 4. The height and weight of the applicant;

5 5. The color of eyes and hair of the applicant; and

6 6. A Two, one and one-quarter inch (1 1/4") by one and
7 one-half inch (1 1/2") photograph of the applicant which
8 shall bear a true resemblance to the applicant. It shall be
9 within the discretion of the clerk and recorder to refuse a
10 photograph which does not present a true resemblance of the
11 applicant. The second photograph is to be filed with the
12 state."

13 Section 107. Section 4-508, R.C.M. 1947, is
14 renumbered section 4-5-103, and is amended to read as
15 follows:

16 "4-508 4-5-103. County clerk and recorder to forward
17 application to the Montana ~~liquor-control-board~~ department
18 of revenue for issuance of identification card. The county
19 clerk and recorder shall forward the application, properly
20 filled in and authenticated, to the Montana ~~liquor-control~~
21 ~~board department of revenue~~, and that ~~board department~~ shall
22 prepare an identification card upon a laminating machine.
23 The identification card shall set forth all the information
24 contained in the application, together with the photograph,
25 and shall be signed by the ~~chairman-of~~ director of the

1 Montana ~~liquor-control-board~~ department of revenue or his
2 designee."

3 Section 108. Section 4-509, R.C.M. 1947, is
4 renumbered section 4-5-104, and is amended to read as
5 follows:

6 "~~4-509 4-5-104~~. Montana ~~liquor-control-board~~
7 department of revenue to furnish application forms to
8 county clerk and recorders. It shall be the duty of the
9 Montana ~~liquor-control-board~~ department of revenue to
10 prepare suitable application blanks and cause the same to be
11 distributed to the various county clerk and recorders."

12 Section 109. Section 4-510, R.C.M. 1947, is
13 renumbered section 4-5-105, and is amended to read as
14 follows:

15 "~~4-510 4-5-105~~. Fee to be charged. The county clerk
16 and recorders shall charge and collect a fee of one dollar
17 ~~{62}~~ and fifty cents (\$1.50) from the applicant at the time
18 the application is prepared. ~~This--fee One dollar (\$1)~~
19 thereof shall be transmitted to the Montana ~~liquor-control-~~
20 ~~board~~ department of revenue along with the application and
21 shall be used to defray the cost of administering and
22 executing the provisions of this act code. Any surplus
23 shall revert to the general fund of the state of Montana.
24 The remaining fifty cents (\$.50) shall be paid into the
25 general fund of the county to defray the county's costs in

1 administering this program."

2 Section 110. There is a new section to be numbered
3 4-1-107, R.C.M. 1947, which reads as follows:

4 4-1-107. Definitions. As used in this code:

5 (1) "Alcohol" means ethyl alcohol, also called ethanol
6 or the hydrated oxide of ethyl.

7 (2) "Alcoholic beverage" means a compound produced and
8 sold for human consumption as a drink that contains more
9 than one-half of one percent (0.5%) of alcohol by volume.

10 (3) "Beer" means a malt beverage containing not more
11 than seven percent (7%) of alcohol by weight.

12 (4) "Brewer" means a person who produces malt
13 beverages.

14 (5) "Department" means the Montana department of
15 revenue.

16 (6) "Immediate family" means a spouse, dependent
17 children, or dependent parents.

18 (7) "Industrial use" means a use described as
19 industrial use by the Federal Alcohol Administration Act and
20 the federal rules and regulations of 27 CFR.

21 (8) "Liquor" means an alcoholic beverage except beer.

22 (9) "Malt beverage" means an alcoholic beverage made
23 by the fermentation of an infusion or decoction, or a
24 combination of both, in potable brewing water, of malted
25 barley with or without hops or their parts, or their

products, and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without other wholesome products suitable for human food consumption.

(10) "Package" means a container or receptacle used for holding an alcoholic beverage.

(11) "Proof gallon" means a U. S. gallon of liquor at sixty degrees on the Fahrenheit scale that contains fifty percent (50%) of alcohol by volume.

(12) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(13) "Residence" means a building, part of a building, or tent where a person resides, but does not include any part of a building that is not actually and exclusively used as a private residence.

(14) "Rules and regulations" means rules and regulations published by the department pursuant to this act.

(15) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(16) "State liquor store" means a retail store operated

by the department in accordance with this code for the purpose of selling distilled spirits and wines.

(17) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana, off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer, and from which a brewer may sell or distribute beer as permitted by this code.

(18) "Warehouse" means a building or structure owned or operated by a licensed wholesaler for the receiving, storage and distribution of beer as permitted by this code.

(19) "Wine" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe, fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging and that contains not less than seven percent (7%) nor more than twenty-four percent (24%) of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine, labeled and sold as wine in accordance with federal regulations are also wine.

Section 111. There is a new section to be numbered

1 4-1-204, R.C.M. 1947, which reads as follows:

2 4-1-204. Health professions exemption. A physician,
3 dentist, veterinarian or pharmacist, acting within the scope
4 of his professional responsibility and license to practice,
5 who prescribes, prepares, or administers alcohol or
6 substances containing alcohol, and sells or charges a fee,
7 does not violate the prohibitions of this title.

8 Section 112. There is a new section to be numbered
9 4-1-206, R.C.M. 1947, which reads as follows:

10 4-1-206. Local option. The electors of a county may,
11 by approving an initiative as provided under Title 37,
12 chapter 3, R.C.M. 1947, prohibit the sale and consumption of
13 liquor, or of all alcoholic beverages, within the county.
14 If such initiative is presented to the board of county
15 commissioners, the board may not approve it but shall submit
16 the proposal to the people under section 37-301.

17 Section 113. There is a new section to be numbered
18 4-1-405, R.C.M. 1947, which reads as follows:

19 4-1-405. In addition to the annual license tax imposed
20 by section 4-4-401, a tax of three dollars (\$3) per barrel
21 of thirty-one (31) gallons is hereby levied and imposed on
22 each and every barrel of beer sold by any duly licensed
23 brewer who manufactures beer in the state of Montana, which
24 said barreage tax shall be due at the end of each month and
25 shall be payable with the brewer's monthly return or

1 statement required to be made to the department under the
2 provisions of section 4-3-203.

3 Section 114. There is a new section to be numbered
4 4-4-109, R.C.M. 1947, which reads as follows:

5 4-4-109. Passenger carrier licenses. Common carriers
6 serving Montana may serve beer and liquor to passengers in
7 aircraft over or railroad cars in the state of Montana, upon
8 the issuance by the department of revenue of a retail beer
9 and liquor license for that purpose. Such licenses shall be
10 issued on an annual basis to common carriers making
11 application therefor, and shall be effective from July 1 of
12 the current year to July 1 of the following year. They
13 shall be issued upon payment by the applicant of an annual
14 license fee in the sum of three hundred dollars (\$300);
15 provided, that licenses shall be issued for the remainder of
16 the fiscal year commencing July 1, 1968, upon payment of a
17 license fee in the sum of one hundred fifty dollars (\$150).

18 Section 115. There is a new section to be numbered
19 4-4-110, R.C.M. 1947, which reads as follows:

20 4-4-110. Payment of liquor taxes by passenger
21 carriers. Every airline or railroad operating in the state
22 of Montana and selling liquor purchased outside this state
23 for consumption within this state shall pay to the Montana
24 department of revenue the excise taxes and state markup
25 which would be applicable to such liquor if purchased from

1 the state liquor store.

2 The amount of such excise taxes and state markup
3 payable shall be determined by multiplying the following
4 factors:

5 (a) the average liquor used per departure;

6 (b) the number of departures from Montana on which
7 liquor is served;

8 (c) the ratio of Montana revenue passenger miles to
9 system revenue passenger miles; and

10 (d) the applicable excise tax and state markup rates.

11 From said product, the carrier shall subtract the
12 amount of excise taxes and state markup on purchases of
13 liquor made within this state.

14 Section 116. There is a new section to be numbered
15 4-4-111, R.C.M. 1947, which reads as follows:

16 4-4-111. Other accounting methods -- forms. (1) The
17 method provided in section 4-4-110 shall be presumed to
18 determine fairly and correctly the liquor purchased outside
19 this state and sold for consumption with this state. Any
20 carrier aggrieved by the application of such method may
21 petition the department for use of some other method.
22 Thereupon, if the department finds that the application of
23 such method will be unjust to the carrier, it may allow the
24 use of the method so petitioned for by the airline or may
25 use such other method as will fairly reflect the liquor

1 purchased outside this state and served for consumption
2 within this state.

3 (2) The department shall prescribe report forms which
4 shall be used by the carriers in reporting their sales and
5 computing their liability for excise taxes and markup.
6 Report forms shall be filed and payment of excise taxes and
7 state markup shall be made on a quarterly basis. The filing
8 of report forms and payment of excise taxes and state markup
9 shall be made not later than the last day of the month
10 immediately following the close of each quarterly period.

11 Section 117. There is a new section to be numbered
12 4-6-202, R.C.M. 1947, which reads as follows:

13 4-6-202. Arrest, entry of complaint, and lawful search
14 and seizure authorized. The department shall enforce the
15 provisions of this code, and may appoint certain of its
16 investigators as peace officers for the purpose of enforcing
17 this code. The powers of such persons under Title 95,
18 R.C.M. 1947, are limited to violations of a provision of
19 this code. Within these limits, a peace officer may arrest
20 any person violating this code, may enter complaint before
21 any court of competent jurisdiction, and may lawfully search
22 for and seize for use as evidence any unlawful or unlawfully
23 possessed liquor, beer, licenses or stamps.

24 Section 118. There is a new section to be numbered
25 4-3-308, R.C.M. 1947, which reads as follows:

4-3-308. Refilling of liquor bottles prohibited. No person who sells, or offers for sale, liquor, nor the agent or employee of such person, may--

(1) place in any liquor bottle any liquor whatsoever other than those contained in such bottle at the time of stamping by the federal government; or

(2) possess any liquor bottle in which any liquor has been placed in violation of subsection (1); or

(3) by the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of stamping by the federal government; or

(4) possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of subsection (3); except that this section does not prohibit any reuse of liquor bottles which is permitted under laws or regulations of the federal government.

Section 119. Section 41-2004, R.C.M. 1947, is amended to read as follows:

"41-2004. Definition of terms. For the purposes of this act the words and phrases used herein have the following meaning:

(1) "Person" includes any establishment, firm, partnership, corporation, person or association of persons.

(2) "Restaurant" means a public eating house where

food is prepared and served for human consumption on the premises.

(3) "Lessee" means one to whom a lease is made.

(4) "Bar" or "tavern" means a house where liquor or beer are sold to be drunk on the premises.

(5) "Liquor" means ~~and---includes any alcoholic, spirituous,--vinous,--fermented, malt or other liquor, which contains more than one per centum (1%) of alcohol by weight, but shall not mean or include beer as that term is--defined in--the Montana Beer Act by subsection (b) of section 4-302, Revised Codes of Montana, 1947~~ beverage so defined in the Alcoholic Beverages Code.

(6) "Beer" means any beverage ~~obtained by alcoholic fermentation of an infusion or decoction of barley, malt and hops, or of any similar products, in drinkable water, containing not more than four per centum (4%) alcohol by weight~~ so defined in the Alcoholic Beverages Code.

(7) "Employee" means a person who works for wages or salary in the service of an employer.

(8) "Business" means a commercial enterprise of any kind involving the buying and selling of goods."

Section 120. The following sections of the Revised Codes of Montana 1947 are renumbered as follows: 4-114.1 is renumbered 4-2-202; 4-114.2 is renumbered 4-2-203; 4-119 is renumbered 4-2-102; 4-151 is renumbered 4-3-101; 4-169 is

1 renumbered 4-3-105; 4-170 is renumbered 4-3-103; 4-172 is
2 renumbered 4-6-105; 4-206 is renumbered 4-6-107; 4-207 is
3 renumbered 4-6-108; 4-241 is renumbered 4-1-402; 4-315 is
4 renumbered 4-3-205; 4-317.2 is renumbered 4-3-207; 4-317.3
5 is renumbered 4-3-208; 4-317.4 is renumbered 4-3-209;
6 4-317.5 is renumbered 4-3-210; 4-317.6 is renumbered
7 4-3-211; 4-322 is renumbered 4-3-215; 4-323 is renumbered
8 4-3-216; 4-324 is renumbered 4-1-404; 4-329 is renumbered
9 4-3-303; 4-403.1 is renumbered 4-4-205; 4-404 is renumbered
10 4-4-403; 4-408.2 is renumbered 4-4-305; 4-506 is renumbered
11 4-5-101; 4-512 is renumbered 4-5-106.

12 Section 121. Sections 4-102, 4-104, 4-105, 4-106,
13 4-110, 4-111, 4-115, 4-118, 4-134, 4-135, 4-136, 4-137,
14 4-138, 4-142, 4-143, 4-144, 4-145, 4-146, 4-147, 4-148,
15 4-149, 4-159, 4-163, 4-167, 4-173, 4-201, 4-202, 4-203,
16 4-204, 4-205, 4-221, 4-222, 4-223, 4-227, 4-228, 4-230,
17 4-232, 4-234, 4-235, 4-236, 4-237, 4-239, 4-302, 4-305,
18 4-306, 4-307, 4-312, 4-314, 4-317.8, 4-337, 4-339, 4-345,
19 4-350, 4-351, 4-352, 4-353, 4-354, 4-355, 4-356, 4-402,
20 4-405, 4-409, 4-414, 4-424, 4-425, 4-431, 4-432, 4-433,
21 4-434, 4-435, 4-436, 4-437, 4-438, 4-441, 4-501, 4-502,
22 4-503, 4-504, 4-505, 4-513, and 4-514, R.C.M. 1947, are
23 repealed.

-End-

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

The second meeting of the Business and Industry Committee was called order by Chairman Regan on the above date in Room 405 of the State Capitol Building at 11:00 a.m. This was a joint meeting of the House and Senate Business and Industry Committees on Senate Bill 1.

ROLL CALL: All members were present with the exception of Senator Hazelbaker who was excused.

Senator Turnage, as chief sponsor, presented Senate Bill No. 1, "An Act to Recodify and Generally Revise the Alcoholic Beverage Control Laws." The following offered testimony:

Bill Groff, Director of the Department of Revenue, told the Committee that they found eight (8) conflicts. He suggested that a subcommittee be appointed to look into these conflicts. He then stated that as a Department they supported the bill. He then commented on what a good job the committee did. Mr. Groff then introduced Ken Wynn, Administrator of the Liquor Division of the Department of Revenue.

Ken Wynn, Administrator of the Liquor Division of the Department of Revenue said that he agreed with the bill and made a few suggestions amending. (attached)

Jack Vaughn, Division Chief of the Law Enforcement Division of the Department of Revenue, commented on the Investigation aspect of the (attached)

Roger Tippy, Researcher for the Committee, commented on the floating license formula of the bill. He said that it was a product of four or five people. Senators Regan and Turnage were appointed to go to work on the changes of the bill. He then said that page 102 of Senate Bill 1 is a procedure where a limited number of licenses could be transferred. He then went into the quota stage of the bill and what effect this bill would have on the quotas of different towns and cities in Montana.

Jack Williams, Chiefs of Police Association, commented on the section of the bill that would allow the Department of Revenue Investigator for the Liquor Division to carry weapons. He said he supported the but that he did not favor this section. In section 124 line 13 he said that the Helena Police should be called if any trouble arose.

Senator Towe stated that if they give Investigators the authority carry guns why not give Bank Inspectors and Health Inspectors the authority to carry guns.

Bill Groff said that if you are going in after hours then sometimes you need some type of authority. Sometimes the police officers are not there.

Senator Turnage then talked about the quota system. He said that licenses may only be transferred to an area of demonstrated need which would not result in putting the area above the 125% of quota.

Senator Foster brought up the point that if someone buys a license in one town and can take it to another town and sell it but the second buyer can not sell it then what would happen.

Senator Regan replied that they are going to face a buyer's market. She stated that he may sell his establishment and float in another floater. She also stated that this has been discussed with the Department of Revenue in depth.

Senator Turnage added to this by saying that a man who bought a license in Butte for \$5,000 and moves it to Bozeman and the next day he can sell it for \$50,000 would have a windfall.

Senator Towe called the Committee's attention to the omission of work "equipment" from page 103 section B.

Senator Devine asked what would happen if they transferred a license to Butte, then went to Bozeman and the bank there gave them an SB loan, then the bank found out that the person can not operate in Bozeman so the bank takes the loan back.

Senator Turnage replied that the license would expire in that case.

Senator Towe asked the Committee what would happen if someone in Butte died who has a license and the daughter inherits it and she sells the business in order to pay her father's debts.

Senator Turnage answered by saying the only way to transfer the license is to die and have the license go to testate or intestate.

Senator Regan said she could sell the premises and the inventory all real property and equipment and float the new one in. There would have to be some prior application made with the Department of Revenue.

Senator Devine asked if she could form a corporation like the Ram Inns and run it under her license.

Jack Vaughn replied that she could not.

Senator Regan adjourned the meeting at 12:45 a.m.

87, 47

Dan Mizner, Chairman of the League of Cities and Towns, said that they were in support of the bill. He said that they have no decision on the section describing Police Officers and Investigators from the Department of Revenue.

Phil Strobe, Lobbyist for the Montana Tavern Association and the Montana Innkeepers Association recommended some amendments. (attached)

Al Dougherty, Montana Beer Wholesaler's Association, suggested an amendment in section 64. He did not understand why the words "or retailers" was added to that section. He also read section 4-322 page 126. He said that change in the law was passed by Legislature two years ago. He then said that he would be happy to meet with the subcommittee to work out a few details of the bill.

Chairman Regan then concluded the testimony of the meeting and would place the bill in a subcommittee for further work. The meeting was then opened up for questions by the Committee.

Senator Turnage requested those who had amendments to put them into written form.

Representative Bradley brought up the point of increasing license fees in ten years if the population continued to increase.

Senator Turnage answered her question by saying that an area has to be 25% over-quota before moving a license out into an area which can accept the license without going over 125%.

Roger Tippy stated that all they are trying to do with this bill is to even the licenses out among the towns and cities in the state.

Representative Quilici asked what effect this would have on Butte who is 300% over quota now. What would this impact have on Butte and the licenses that have been handed down from generation to generation.

Senator Turnage said that if they chose to stay in Butte it would have no effect.

Senator Towe inquired into the inter-transfer of license after it is transferred to an under-quota area. Could they receive financing because they could move licenses out of the building.

Senator Turnage said there should be some limitation. He said that the package must include real estate and all. It should be titled to a real estate mortgage agreement.

Senator Towe asked if there was any power under the Department of Revenue now as far as peace officers.

Jack Vaughn referred to page 27 of Senate Bill 1 and said that force may be used to take evidence. He said there was no use giving people authority if it was only partial authority.

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January 13, 1975

SENATOR J. A. TURNAGE

Senate Bill 1 is the product of an interim legislative study in the spring and summer of 1974 by an interim subcommittee of the Judiciary committees. It is a combination of three types of bills, namely:

1. A reorganization or recodification which amends a great many sections simply by updating references to agencies and other titles, and by repealing redundant sections or sections definitely obsolete, such as those providing for the appointment and terms of members of the Liquor Control Board. This includes rearrangement of the sections for a more readable code.

2. A modernization bill, which repeals sections or deletes parts of sections which establish policies no longer considered necessary or viable. Examples of such policies are the interdiction procedure for problem drinkers and the affidavit procedure for young adults purchasing beverages.

3. A substantive bill, which makes some changes in viable policies while retaining the basic form of the policies. The foremost example of such changes is the so-called "floating license" amendment of the quota system.

The subcommittee report as published by the Legislative Council discusses the quota system changes at pages 5 and 6, and the other policy changes at pages 12 through 14. I will

not attempt to discuss the bill section-by-section, since that requires several hours and three members of your committee-- Senators Regan, Rosell, and Devine--already went through that process once, last September. Their constitutional protection against double jeopardy should spare them a repetition.

Suffice it to say that the bill is needed, it has been worked over with care by the subcommittee with the active participation of the Department of Revenue and the affected private interests, and it should receive a do pass recommendation.

Thank you.

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Name Kenneth Wynn Date 1/13/
Address _____ Support ? _____
Representing Dept. of Revenue Oppose ? _____
Which Bill ? SB #1 Amend ? _____

Comments:

I support SB #1. We have revised SB #1 and with its content to the extent it will give us necessary workable tool to effectively administer the liquor control laws in Mo. We have noted some potential problems or conflicts in the bill as follows;

Page 60 line 21-23

Page 67 line 2 & 3 Conflicts with page 122 -
14 thru 17.

line 17 thru 22 conflict with page 113 -
10 thru 18.

Page 80 all beverage licenses / retail licenses

Page 99 special permit fees

Page 102 line 1 thru 6

Page 105 financially capable

Please leave prepared statement with the committee secretary.

LAW ENFORCEMENT POWERS IN S. B. 1

1. At times, rare as they may be, the Revenue Investigator may find that for control needs arrest authority. On these occasions there is neither the time nor the personnel to stop everything and look for a police officer. Currently the danger factor is extremely high in these instances. (Specific cases can be provided.)

2. Department of Revenue Investigators currently have arrest authority in the R.C.M. 84-50 (Cigarette Tax). Consequently we must have personnel qualified as peace officers regardless of the liquor control law.

3. No Revenue Investigator is authorized to carry a weapon unless that person meets all of following criteria:

- a. He has been trained as a peace officer and met the minimum Standards of Training requirement;
- b. He has specific authorization from the Bureau to carry a weapon in imminent danger;
- c. He is a duly sworn peace officer by the Director of the Department;
- d. Is acting within the legal limits of his jurisdiction.

4. Senate Bill 1 does not give Revenue Investigators any authority for any laws other than governing liquor control.

5. All new Investigators must meet the following qualifications:

- a. College degree and/or equivalent experience in law enforcement;
- b. Pass competitive entrance exams;
- c. Rank highest in a graded interview by a panel of three or more;
- d. Have a flawless background (checked through intensive investigation); and
- e. Complete six (6) month probation period.

6. The Department of Revenue, Investigation Bureau, states that it will enforce the Alcoholic Beverage Laws with sincere professionalism. No investigator will be armed or armed.

Our goals are to help the Alcoholic Beverage Industry:

1. Protecting the legitimate members from illegal activities;
2. Establish and continue to be a resource and a help to the industry; and
3. Provide equality to all members through professional and ethical enforcement.

THOMAS H. MAHAN
PHILIP W. STROPE

January 10, 1975

Senator Pat Regan
Chairman
Business & Industries Committee
State Senate
State Capitol
Helena, Montana 59601

Re: Senate Bill 1

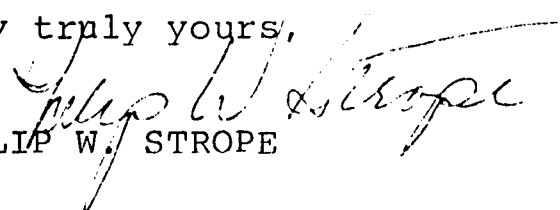
Dear Senator Regan:

The Montana Tavern Association and the Montana Innkeeper Association recommend the following amendments to SB 1:

1. Page 7, line 15, delete the words "retail establishments". The reason for this is that on page 41, Section 46, the closing hours for retail establishments is provided.
2. Page 58, line 4, add the following: "No permit will be issued by the department under this section until the department is satisfied that the applicant has adequately provided the means by which the public health, welfare and safety for the public and the patrons is provided for and available."
3. Page 103, lines 1 through 9, delete.
4. Page 124, Section 117, delete last paragraph.

Please be advised that Bob Durkee, Curt Lees and I, on behalf of the Montana Tavern Association, Yellowstone County Beverage Association and the Montana Innkeepers Association, are available to you or any member of your committee to discuss in depth the reasons for the recommendations contained in this letter.

Very truly yours,


PHILIP W. STROPE

PWS/aj

Jan 18

BUSINESS AND INDUSTRY SUB-COMMITTEE

MONTANA STATE SENATE

The first meeting of the Business and Industry Sub-Committee on Senate Bill 1 was called to order by Chairman Regan at 11:00 a.m. on the above date. The meeting was called to discuss the proposed amendments on this bill.

ROLL CALL: All members of the sub-committee were present.

Chairman Regan opened the meeting with the first topic of discussion. The amendment on page 11, Section 7, lines 13 and 14 dealing with retail establishments.

Senator Rosell moved the words "days and" be stricken.

Senator Towe remarked that the only provision governing section 46 of the bill is that retail establishments be closed between the hours of 2:00 a.m. and 6:00 a.m. every day.

Senator Rosell then moved that the words "retail establishments" page 7 section 6 lines 15 and the words "days and" page 7 section 6 lines 13 and 14 be stricken.

Senator Rosell moved that we accept the suggested amendment and that the words "contract or and agent or" be stricken.

Chairman Regan felt that some sort of language be substituted in its place. She asked the committee to insert "Enter into an agency agreement" in place of "contract."

Senator Rosell moved that the amendment be changed to insert the wording "inter into an agency agreement" in lieu of "contract." All were in favor of the motion.

The next amendment was page 56 line 15, the words "or retailers." Chairman Regan asked if there was any discussion on this matter.

Senator Towe commented that this was added during the interim study at the suggestion of the Tavern Association. He felt the law should not be changed.

Senator Foster then moved that the words "or retailer", section 64, line 15, page 56, be deleted. All were in favor.

The next amendment was section 65 line 4 page 58. The question on this amendment was whether this amendment is necessary in view of the existing law.

Senator Towe said that the Tavern Association has no objection to holding special permits. He felt that if they are going to do this they should certainly do a better job of cleaning up and have better sanitation facilities. He was referred to the beer fests in Missoula of which pictures were taken.

Chairman Regan felt that it may be unfair to impose these restrictions. She there was no reason for requiring these facilities on a summer outing or family picnic. This is what you would be doing if the last two lines are included.

Mr. Wynn, Department of Revenue, stated that they have not required these restrictions.

Senator Rosell then moved that we pass consideration on this particular area. All were in favor.

Roger Tippy, Committee Researcher, was strongly opposed to the amendment. He discussed what would happen if you removed a floater license from a privilege to a piece of property. It would mean that a license could be purchased in town and moved to another town for whatever it could command in that area. The sub-committee worked hard on this over the summer. The license could be sold three years after the transfer. He stated that the sub-committee failed on because they felt that it did not cut down on windfall profits.

Chairman Regan reminded the sub-committee that a floater license is non-transferable except by inheritance. She stated that she would rather see the section completely deleted than let a floater become real property. This was through the committee three times.

Chairman Regan then stated that they face a buyers market. She stated that there are 81 cities that are over-quota. Butte is 73 over-quota while Red Lodge is only 11 or 12 over-quota. Chairman Regan then read from the computer print outs that the Department of Revenue provided. She stated that Silver County is the largest county over-quota. This would not be a Butte relief.

Senator Foster remarked that what he has come up with is that if we go with provision what we are doing is helping the large chain corporations to come and do it properly with some profit. They will not have to pay as much for license. What this is is a relief bill for them.

Chairman Regan disagreed. She said they have gone through this in great detail. She then read some statistics from the print out.

Senator Foster then moved that we leave page 103, lines 1 through 9 as is. All were in favor.

The next amendment was page 103 section 88 lines 4 through 9. Chairman Regan brought up the point that a license should be issued to a natural person to stop it from going into a corporation and can not be transferred except by inheritance to his direct heirs. Should have it tied to the property so that he can not walk across the street and start a bar.

Senator Towe said that if a corporation wanted a license then they would have to contract for it with the individual who would actually own or lease property where the tavern is situated.

Chairman Regan mentioned briefly that Monday there was a suggestion that it be tied to the address. She then stated that she would like to pass consideration on this for now. All were in favor. The next amendment was page 124 section 117 to strike the entire section.

Senator Foster moved that for matters of discussion this section should be deleted from the bill. He felt that the police power in the Department of Revenue would be abused. He also felt that they would be asking for trouble because they are not trained men.

Representative Sheldon was inclined to agree with Senator Foster.

Chairman Regan felt that the Department of Revenue must have this power. She thought that a requirement that the Department of Revenue investigators be trained could be built into the law.

Jack Vaughn, Department of Revenue told the sub-committee that they must have the minimum of police training now. They do have extra schooling available to them.

Senator Rosell moved that we pass consideration.

Chairman Regan moved that they recess until after the Senate session. Meeting was adjourned at 12:00 noon.

The sub-committee was then called to order by Chairman Regan at 12. The matter under discussion was proposed amendment #7, powers of a for inspectors by permits. Section 117 page 124.

Representative Sheldon stated that if they are trained to carry guns that this would take care of his objections. He then moved that the section remain and that we add the amendment.

Chairman Regan stated that it may require another section.

Senator Foster moved that his previous motion be the same. He remarked that he was concerned that the Department of Revenue agents are carrying guns.

Jack Vaughn stated that weapons are not the key issue here. The issue is protection.

Senator Towe talked about the kind of places these people have to go into and that they are not very safe.

Chairman Regan noted that they do not always have the police available to them.

Page 4
Sub-Committee
Senate Bill 1
January 18, 1975

Senator Foster then moved that section 117 be stricken

Senator Regan moved that this be taken back to the committee for further discussion. All were in favor.

Senator Foster asked Roger Tippy to prepare a provision that allows arrest capabilities but does not allow for carrying of guns.

The next amendment was page 102 line 13, to show address. Chairman Regan felt that this amendment be tied to real estate in order to protect the establishment to whom it is issued.

Senator Rosell moved that the amendment to insert "show address" be voted on. All were in favor.

Senator Towe suggested page 102 lines 4 through 9, strike the words, "natural person" and insert "one natural person." And on line 3, page 102 insert "linical decendant."

Senator Rosell moved that page 102, section 88 lines 4 through 9 be discussed with full committee. All were in favor of motion.

Roger Tippy read the Proposed Amendments List A Non-Controversial. See attach

Senator Rosell moved that the insert of the new section 122 be renumbered sect 120 and sub-section 121 be renumbered 122. All were in favor.

Chairman Regan then referred to List A of proposed amendments and asked for a motion dealing with these.

Senator Foster moved that we accept amendments as proposed. All were in favor. He then moved that the meeting be adjourned. All were in favor.

ADJOURN: There being no further business Chairman Regan adjourned the meeting at 1:40.


Pat Regan, Chairman

PRESIDENT:

, your committee on Business and Industry

had under consideration SENATE Bill No. 1

A BILL FOR AN ACT ENTITLED: "AN ACT TO RECODIFY AND GENERALLY
REVISE THE ALCOHOLIC BEVERAGE CONTROL LAWS."

ctfully report as follows: That SENATE Bill No. 1

Be amended in the introduced bill as follows:

1. Amend page 11, section 7, line 14.

Following: "shall"

Strike: "contract or"

2. Amend page 11, section 7, line 16.

Following: "the"

Strike: "agent or"

SO AMENDED
PASS

S137

"Agency Agreement" means an agreement between the department and a person appointed to sell liquor as a commission merchant, rather than as an employee.

Insert page 118 as paragraph (1) , line 5

Submitted with the approval of the Department of Revenue and the Montana Council of Clerks

BUSINESS AND INDUSTRY SUB-COMMITTEE

ON SENATE BILL ONE

SUMMARY REPORT OF DELIBERATIONS

The sub-committee met with a like sub-committee from the House on Saturday, January 18, and discussed the various amendments proposed to the bill. The proposals had been divided into two lists, one of controversial proposals and the other of proposals not expected to be controversial. The sub-committee reached agreement on four of the nine somewhat controversial suggestions. These were:

- (1) to strike references to the department rule-making powers over the hours of state stores and the hours and days when retail establishments could be opened; it was concluded that statutory provisions elsewhere in the code should control (page 7, lines 13 and 14).
- (2) to amend the department's proposed authority to contract for retail sales concessions into authority to enter into agency agreements (page 11 line 7).
- (3) to strike a retailer's authority to purchase beer from another retailer (page 56, line 15)
- (4) to pass consideration of the proposal to tie special beer permits to a public health, welfare, and safety standard (page 58 line 4), since a regulation in the administrative code seemed to cover the situation.

The sub-committees discussed at length the proposals to amend the sections restricting transfer of a floater license and to give liquor inspectors peace officer powers, but reached no consensus and voted to return the issues to the full committees without recommendation. The balance of the amendments appended were the non-controversial housekeeping amendments proposed by the department.

Proposed Amendments
List A -- Non-controversial

Amend page 60, Section 66, lines 11 and 12.

Following: "license"

Strike: "which shall not be used in conjunction with a retail liquor license"

Amend page 60, Section 66, lines 21, 22, and 23.

Following: "inhabitants"

Strike: "which said beer license shall not be used in conjunction with retail liquor licenses"

Amend page 61, Section 66, lines 8 and 9.

Following: "inhabitants"

Strike: "which shall not be used in conjunction with retail liquor licenses"

Amend page 67, Section 68, lines 1, 2, and 3.

Strike: "Each "vehicle" being a common carrier of passengers, or other persons operating buffet and dining cars for such common carrier, twenty-five dollars ~~(\$25.00)~~ (\$25)."

Amend page 67, Section 68, lines 17 through 22.

Following: "revenue"

Strike: "; the cities and towns may also impose a fee on a licensee of the ~~board~~ department for selling beer at retail in the city or town providing said fee shall be reasonable and not in excess of the ~~amount-imposed-by-the-state~~ limits set by section 4-4-406"

Amend page 99, Section 87, line 16.

Strike: "ten dollars ~~(\$10.00)~~ (\$10) "

Insert: "twenty dollars (\$20.00) "

Amend page 102, Section 88, line 6.

Following: "department"

Strike: "."

Insert: "; however, the department may, within its discretion permit a qualified purchaser to operate the business to be transferred pending final approval, providing *the* ~~and~~ application for transfer has been filed with the department."

Amend page 105, Section 90, lines 10, 11, and 12.

Strike: "the applicant is financially capable, with no ownership interest of his own or of any member of his immediate family"

Insert: "neither the applicant nor any member of his immediate family has an ownership interest"

and page 127, Section 120, lines 9 and 10.

Following: "4-4-205;"

Strike: "4-404 is renumbered 4-4-403;"

mend page 127, following line 23

Add a new section 122 which reads as follows:

"Section 122. Section 4-404, R.C.M. 1947, is renumbered section 4-4-403, and is amended to read as follows:

~~4-404~~ 4-4-403. License fee for retail sale of liquor within and without cities and towns of designated populations -- census of population. Each licensee licensed under the provisions of this act the quotas of section 4-4-202 shall pay an annual license fee as follows:

(a) Except as hereinafter provided, for each license outside of incorporated cities and incorporated towns, or in incorporated cities and incorporated towns with a population of less than two thousand (2,000), ~~two~~ four hundred ~~(\$200.00)~~ (\$400) dollars per annum;

(b) Except as hereinafter provided, for each license in incorporated cities with a population of more than two thousand (2,000) and less than five thousand (5,000), three hundred (\$300.00) dollars per annum; or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, ~~three~~ five hundred ~~(\$300.00)~~ (\$500) dollars per annum;

(c) Except as hereinafter provided, for each license in incorporated cities with a population of more than five thousand (5,000) and less than ten thousand (10,000), or within a distance of five (5) miles thereof, ~~measured~~ measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, ~~four~~ six hundred fifty ~~(\$450.00)~~ (\$650) dollars per annum;

(d) For each license in incorporated cities with a population of ten thousand (10,000) or more, or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, ~~six~~ eight hundred dollars ~~(\$600)~~ (\$800) per annum;

(e) For each railway system in the state of Montana, three hundred (\$300.00) dollars per annum;

(f) The distance of five (5) miles from the corporate limits of any incorporated cities and incorporated towns shall be measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within five (5) miles of the corporate boundaries of two (2) or more incorporated cities or incorporated towns of different populations the license chargeable by the larger incorporated city or incorporated town shall apply and be paid by the applicant; provided, the premises of the applicant to be

mend page 127, following line 25

Add a new section 122 which reads as follows:

"Section 122. Section 4-404, R.C.M. 1947, is renumbered section 4-4-403, and is amended to read as follows:

~~4-404~~ 4-4-403. License fee for retail sale of liquor within and without cities and towns of designated populations -- census of population. Each licensee licensed under the provisions of this act the quotas of section 4-4-202 shall pay an annual license fee as follows:

(a) Except as hereinafter provided, for each license outside of incorporated cities and incorporated towns, or in incorporated cities and incorporated towns with a population of less than two thousand (2,000), ~~two~~ four hundred ~~(\$200.00)~~ (\$400) dollars per annum;

(b) Except as hereinafter provided, for each license in incorporated cities with a population of more than two thousand (2,000) and less than five thousand (5,000), three hundred (\$300.00) dollars per annum; or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, ~~three~~ five hundred ~~(\$300.00)~~ (\$500) dollars per annum;

(c) Except as hereinafter provided, for each license in incorporated cities with a population of more than five thousand (5,000) and less than ten thousand (10,000), or within a distance of five (5) miles thereof, ~~measured~~ measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, ~~four~~ six hundred fifty ~~(\$450.00)~~ (\$650) dollars per annum;

(d) For each license in incorporated cities with a population of ten thousand (10,000) or more, or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, ~~six~~ eight hundred dollars ~~(\$600)~~ (\$800) per annum;

(e) For each railway system in the state of Montana, three hundred (\$300.00) dollars per annum;

(f) The distance of five (5) miles from the corporate limits of any incorporated cities and incorporated towns shall be measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within five (5) miles of the corporate boundaries of two (2) or more incorporated cities or incorporated towns of different populations the license chargeable by the larger incorporated city or incorporated town shall apply and be paid by the applicant; provided, however, that when the premises of the applicant to be licensed are situated within an incorporated town or incorporated

city and any portion of said incorporated town or incorporated city be without said five (5) mile limit then the license fee chargeable by the smaller incorporated town or incorporated city shall apply and be paid by said applicant.

An applicant for the issuance of an original license to be located in areas described in subsection (d) of this section shall pay a one-time original license fee of twenty thousand dollars (\$20,000) for any such license issued. The said one-time license fee of twenty thousand dollars (\$20,000) shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, shall be subject to the annual renewal fee of ~~six~~ eight hundred dollars ~~(\$600)~~ (\$800).

The license fees herein provided for are exclusive of and in addition to other license fees chargeable in the state of Montana for the sale of liquor, beer and malt beverages.

The census taken under the direction of Congress of the United States in the year nineteen hundred and thirty, and every ten years thereafter, shall be the basis upon which the respective populations of said municipalities shall be determined, unless a direct enumeration of the inhabitants thereof be made by the state or municipal corporation, in which case such later direct enumeration shall constitute such basis, provided, however, that no census hereafter taken shall be such basis until it shall have been published under the authority under which the same shall be taken, and then its effect shall from the date of such publication be prospective only and provided, further, that none of the provisions of this act shall be deemed to operate retroactively."

Subcommittee on SB 1
Proposed amendments
List B -- Controversial

1. Amend page 7, Section 6, line 14.

Following: "hotels,"

Strike: "and"

- Amend page 7, Section 6, line 15.

Strike: "retail establishments"

Proposed by : Tavern Association

Comments: Director of Revenue Department feels authority to make rules for closing hours more restrictive than those set by statute might be useful in some cases.

2. Amend page 11, Section 7, line 14.

Strike: "contract"

- Amend ~~page 11~~, Section 7, ~~line 16~~.

Strike: "agent or"

Proposed by : Retail Clerks' Union

Comments: Administrator of Liquor Division says five agency-type concessions for bottle sales are already operating in areas where economics do not justify a full-scale stat liquor store. Division feels this is within authority of present law and the proposed language merely expresses more clearly what's already happening.

3. Amend page 56, Section 64, line 15.

Strike: "or retailer"

Proposed by : Beer Wholesalers

4. Amend page 58, Section 65, line 4.

Following: "provided."

Insert: "No permit will be issued by the department under this section until the department is satisfied that the applicant has adequately provided the means by which the public health, welfare and safety of the public and the patrons is provided for and available."

Proposed by: Tavern Association

Comments: Liquor Division advises that one of their rules (Mt. 7 Code, sec. 42-3.26(10)-526140) already covers this situation. The rule provides that the premises for a special permit must be "suitable", including separate toilet and hand washing facilities for male and female patrons, and facilities for washing glasses and equipment, including a three compartment sink and hot and cold running water.

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5. Amend page 103, Section 88, lines 1 through 9.

Strike; all material.

Proposed by : Innkeepers Association

Comments: Strongly opposed by Mr. Strobe's other client, the Tavern Association, according to Mr. Durkee. Effect would be to remove all restraints on transferring a "floater license"

6. Amend page 103, Section 88, lines 4 through 9.

Strike: "If the licensee is a corporation or a business entity other than a natural person, ownership interests in the licensee may not be pledged as security or transferred except by inheritance if the value of such ownership interests exceed the fair market value of the real property and inventory owned by the licensee."

Insert: "A license transferred between quota areas under this section may be held only by a natural person."

Proposed by: Senator Regan

Comments: This would prevent corporations, such as the Ramada Inn in Bozeman, from holding a floater license in the name of the corporation, and would prevent any one from setting up trusts, joint ventures, straw corporations, etc. to hold a license.

7. Amend page 124, Section 117.

Strike: entire section

Proposed by : Tavern Association

Comments: The powers of arrest proposed for liquor inspectors was thoroughly debated at the hearing.

8. Amend page 124, Section 117.

Insert: suitable language to insure that investigators appointed as peace officers are properly trained and qualified.

Proposed by: Chiefs of Police

Comments: Specific language was not submitted. This could be handled by inserting after "appoint" on line 15, "subject to approval by the attorney general,".

Jan 22

BUSINESS MEETING

MONTANA STATE SENATE

The fourth meeting of the Business and Industry Committee was called order by Chairman Regan on the above date at 11:00 a.m. in Room 404 the State Capitol Building. The meeting of the Committee was called to discuss the acceptance of the proposed amendments of Senate Bill 1.

ROLL CALL: All were present with the exception of Senators Foster and Greely who were excused.

Chairman Regan opened the meeting by asking Roger Tippy, Researcher of the Committee, to deliver the proposed amendments to the Committee. He began with the Non-Controversial List A of Proposed Amendments which he read to the Committee. Attached.

Senator Rosell moved that we accept Non-Controversial List A with the exception of items 1, 2 and 3. Not to change them. All were in favor with the exception of Chairman Regan.

Chairman Regan then entertained a motion to move on items 4 through 10 of the Non-Controversial Proposed Amendments. Senator Rosell so moved. All were in favor.

Roger Tippy then proceeded to read Controversial List B of Proposed Amendments. The first amendment was proposed by the Tavern Association and accepted by the Sub-Committee. Page 7 line 13 and 14, strike the words "days and" and preceeding "hours" and in line 14 the last "a". In line 15 strike the words "retail establishments".

Senator Rosell then moved that we accept the amendments. All were in favor.

Roger Tippy proceeded with page 110 line 14 at the suggestion of the Sub-Committee strike word "contract" and insert "enter into an age agreement".

Senator Devine moved that the amendment be accepted. All were in favor.

Roger Tippy continued with page 56 line 15 that the words "or retail" be stricken.

Senator Towe moved to that amendment. All were in favor.

Chairman Regan told the Committee that the Sub-Committee passed a motion on the fourth amendment to let the Committee consider it fully. She then referred to page 58 section 65 line 4.

Senator Towe talked about the sanitation facilities and referred to beer fest in Missoula. He stated that the Department of Revenue has regulation in the Administrative Codes.

Mr. Robert Durkee, Lobbyist for the Montana Tavern Association, felt that the special permit holders should have to live up to the same restrictions as they do, but they do not.

Mr. Bill Groff, Director of the Department of Revenue, believed that they should have the Board of Health and the police at the beer fest and functions of this nature. He stated that they have in the rules now, but that the Department does not have anyone they can send up to check these functions out so the Board of Health does it. He is not always sure that they do it and if they do is not sure that they do a good job. He felt that we should have this as a protection to the public.

Senator Towe moved that we not adopt this amendment.

Senator Devine proposed that we do act on this amendment. He made a substitute motion that the sanitation controls be in there.

Chairman Regan called a vote on the substitute motion. Motion failed with the exceptions of Senators Rosell and Devine.

Roger Tippy proceeded with amendment 5 on floater licenses, page 101 103. Following the word location insert, "at particular address". means that if the license is purchased at 127 Broadway then it has to stay at that address.

Senator Towe felt that this should be a contract between the partner and not the law. He then moved that the amendment not be adopted. All were in favor.

Roger Tippy proceeded with number 5 to strike all requirements on floater license.

Senator Hazelbaker moved that we retain the language. All were in favor.

Roger Tippy told the Committee that the Sub-Committee recommended a modification of language on page 103 line 3 following the word "transfer" to state "to lineal descendant".

Senator Towe was concerned with the new language. He felt that if it was inserted there would be more trouble. Moved that the proposal be adopted. All were in favor.

Senator Rosell moved that a comma be inserted before "security" and after "security". All were in favor.

Roger Tippy continued with amendment 6 to insert a natural person.

Senator Towe was concerned with the license being placed in a person name. He felt there would be conflicts with corporations and industry. Senator Towe remarked that a natural person would exclude corporations and was not sure it should exclude partnerships.

Senator Rosell asked the Committee to define natural person.

Senator Towe explained that it is used in that law to describe a type of business organization where 10 or more owners are not active. They are like stockholders. Senator Towe felt that license should be kept a privilege and keep it from becoming property.

Chairman Regan then stated to entertain a motion with the understanding that we define natural persons.

Senator Towe moved on amendment number six and to later define natural persons and strike one. All were in favor.

Roger Tippy proceeded with amendment 7 and 8 concerning peace officer power for the Department of Revenue Investigators. He felt that they should be properly trained and certified. The Sub-Committee brought this issue to the Committee without recommendation.

Senator Regan asked Senator Towe if there was anyway this section could be written that would give them the power of arrest but not the power to carry weapons.

Senator Towe answered by saying that he would work on it.

Senator Hazelbaker felt that if they are going to have peace officer powers then they should go to police school.

Senator Regan then read Senator Towe's proposed amendment on agency agreement. Attached.

Roger Tippy then followed by stating on page 118 section 110 that this definition would become a subparagraph. The words defined are "agency agreement". Then renumber the following sections to conform numerically.

Senator Rosell moved to accept the proposed amendment of "agency agreement". All were in favor.

Senator Towe then read his proposed definition of arrest power for the Department of Revenue Investigators. He suggested that on page 124 line 15 after the word code strike remaining language and insert new language. Attached.

Senator Regan then offered an addition to Senator Towe's definition. Attached. She then moved to an addition of Senator Towe's amendment on page 124 section 117 to follow his definition. Attached. All were in favor.

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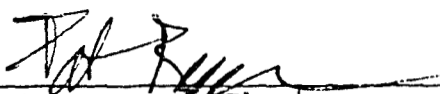
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Senator Towe then read a proposed definition of natural persons.

Attached. Senator Hazelbaker then moved to adopt this amendment. All were in favor.

Senator Hazelbaker then moved that the bill do pass as amended. All were in favor.

ADJOURN: There being no further business Chairman Regan adjourned meeting at 12:45.


Pat Regan, Chairman

Page 103 lines 4 through 9

Insert: license transferred between quota areas under this section may be held only a natural persons. For the purpose of this section, natural persons shall include limited partnerships or other business entities of any kind in which each natural person is not a full participant in this ownership and operation of the business authorized by the license.

And for this purpose an investigator shall have the authority to arrest any person violating this code may enter complaint before any court of competent jurisdiction, and may lawfully search for and seize for use as evidence any unlawful or unlawfully possessed liquor, beer, licenses or stamps if such investigator were a peace officer provided he shall not be authorized to carry a weapon merely because of this authority.

Page 124, Section 117, line 17

Following: "code."

Insert: The investigators given the above authority shall be trained to meet the requirements of the Police Officers Standards of Training.

.....January 22.....

MR.PRESIDENT.....

We, your committee on.....Business and Industry.....

having had under considerationSenate..... Bill 1

A BILL FOR AN ACT ENTITLED: "AN ACT TO RECODIFY AND GENERALLY REVISE THE
ALCOHOLIC BEVERAGE CONTROL LAWS."

Respectfully report as follows: That.....Senate..... Bill

Be amended in the introduced bill as follows:

1. Amend page 7, section 6, lines 13 and 14.

Following: "the"

Strike: "days and"

2. Amend page 7, section 6, line 14.

Following: "hotels"

Strike: "and"

3. Amend page 7, section 6, line 15.

Following: "clubs"

Strike: "retail establishments"

4. Amend page 11, section 7, line 14.

Following: "shall"

Strike: "contract"

ENPASS.

Insert: "enter into an agency agreement"

5. Amend page 56, section 64, line 15.
Following: "wholesaler"
Strike: "or retailer"
6. Amend page 67, section 68, lines 1, 2, and 3.
Strike: lines 1, 2, and 3 in its entirety
7. Amend page 67, section 68, lines 17 through 22.
Following: "revenue"
Strike: Beginning with "; the cities and towns" and ending with "4-4-406".
8. Insert: "."
Amend page 99, section 87, line 16.
Following: "of"
Strike: "ten dollars ~~(\$10.00)~~ (\$10)
Insert: "twenty dollars (\$20)"
9. Amend page 102, section 88, line 6.
Following: "department"
Strike: "."
Insert: "; however, the department may, within its discretion permit a qualified purchaser to operate the business to be transferred pending final approval, providing the application for transfer has been filed with the depar
10. Amend page 103, section 88, line 2.
Following: "security"
Insert: " , "
11. Amend page 103, section 88, line 2.
Following "or"
Insert: "may not"
12. Amend page 103, section 88, lines 4 through 9.
Following: "licensee."
Strike: Beginning with "If" and ending with "licensee."
Insert: A license transferred between quota areas under this section may be held only by natural persons. For the purpose of this section, natural persons shall not include limited partnerships or other business entities of any kind in which each natural person is not a full participant in the ownership and operation of the business authorized by the license.
13. Amend page 105, section 90, lines 10, 11, and 12.
Following: "(1)"
Strike: Beginning with "applicant is financially" and ending with "family".
Insert: "neither the applicant nor any member of his immediate

Strike: lines 1, 2, and 3 in its entirety

7. Amend page 67, section 68, lines 17 through 22.

Following: "revenue"

Strike: Beginning with "; the cities and towns" and ending with "4-4-406".

8. Amend page 99, section 87, line 16.

Following: "of"

Strike: "ten dollars (~~\$10.00~~) (\$10)"

Insert: "twenty dollars (\$20)"

9. Amend page 102, section 88, line 6.

Following: "department"

Strike: "."

Insert: "; however, the department may, within its discretion permit a qualified purchaser to operate the business be transferred pending final approval, providing the application for transfer has been filed with the department"

10. Amend page 103, section 88, line 2.

Following: "security"

Insert: ","

11. Amend page 103, section 88, line 2.

Following "or"

Insert: "may not"

12. Amend page 103, section 88, lines 4 through 9.

Following: "licensee."

Strike: Beginning with "If" and ending with "licensee."

Insert: A license transferred between quota areas under this section may be held only by natural persons. For the purpose of this section, natural persons shall not in limited partnerships or other business entities of an in which each natural person is not a full participant the ownership and operation of the business authorize the license.

13. Amend page 105, section 90, lines 10, 11, and 12.

Following: "(1)"

Strike: Beginning with "applicant is financially" and ending with "family".

Insert: "neither the applicant nor any member of his immediate family has an ownership interest"

14. Amend page 118 section 110 line 5.

Insert: "Agency Agreement" means an agreement between the department and a person appointed to sell liquor as a commission merchant, rather than as an employee.

15. Amend page 124, section 117, lines 15-20
Following: "code" line 15
Strike: Beginning with "and" line 15 and ending with "code" line 20
Insert: " and for this purpose an investigator shall have the authority to arrest any person violating this code, may enter complaint before any court of competent jurisdiction, and may lawfully search for and seize for use as evidence any unlawful or unlawfully possessed liquor, beer, licenses or stamps, as if such investigator were a peace officer, provided he shall not be authorized to carry a weapon merely because of this authority. The investigators, given the above authority, shall be trained to meet the requirements of the Police Officers Standards of Training.
16. Amend page 127, section 120, lines 9 and 10.
Following: "4-4-205;"
Strike: "4-4-4 is renumbered 4-4-403."
17. Amend page 127,,
Following: line 23
Insert: "Section 120. There is a new section to be numbered 4-4-403, R.C.M. 1983, which reads as follows:

4-4-403. License fee for retail sale of liquor within and without cities and towns of designated populations -- census of population. Each licensee licensed ~~under the provisions of this act~~ the quotas of section 4-4-202 shall pay an annual license fee as follows:

(a) Except as hereinafter provided, for each license outside of incorporated cities and incorporated towns, or in incorporated cities and incorporated towns with a population of less than two thousand (2,000), ~~two four hundred (\$200.00)~~ \$400 dollars per annum;

(b) Except as hereinafter provided, for each license in incorporated cities with a population of more than two thousand (2,000) and less than five thousand (5,000), three hundred (\$300) dollars per annum; or within a distance of ~~five~~ (5) miles thereof, measured in a ~~straight line from the nearest entrance of the premises to be~~ licensed to the nearest boundary of such city, ~~three five hundred (\$300.00)~~ \$500 dollars per annum;

(c) Except as hereinafter provided, for each license in incorporated cities with a population of more than five thousand (5,000) and less than ten thousand (10,000) or within a distance of ~~five~~ (5) miles thereof, ~~measured measured~~ in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, ~~four six hundred fifty (\$450.00)~~ \$650 dollars per annum;

(d) For each license in incorporated cities with a population of ten thousand (10,000) or more, or within a distance of five (5)

peace officer, provided he shall not be armed with a
weapon merely because of this authority. The investigators,
given the above authority, shall be trained to meet the requirements
of the Police Officers Standards of Training.

16. Amend page 127, section 120, lines 9 and 10.

Following: "4-4-205;"

Strike: "4-4-4 is renumbered 4-4-403."

17. Amend page 127,,

Following: line 23

Insert: "Section 120. There is a new section to be numbered 4-4-403, R.C.M.
1983, which reads as follows:

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(a) Except as hereinafter provided, for each license outside of
incorporated cities and incorporated towns, or in incorporated
cities and incorporated towns with a population of less than two
thousand (2,000), two four hundred (\$200.00) \$400 dollars per
annum;

(b) Except as hereinafter provided, for each license in incorporated
cities with a population of more than two thousand (2,000) and less
than five thousand (5,000), three hundred (\$300) dollars per annum;
or within a distance of ~~five~~ (5) miles thereof, measured in a
straight line from the nearest entrance of the premises to be
licensed to the nearest boundary of such city, three five hundred
~~(\$300.00)~~ (\$500) dollars per annum;

(c) Except as hereinafter provided, for each license in incorporated
cities with a population of more than five thousand (5,000) and less
than ten thousand (10,000) or within a distance of ~~five~~ (5) miles
thereof, measured measured in a straight line from the nearest
entrance of the premises to be licensed to the nearest boundary of
such city, four six hundred fifty (\$450.00) (\$650) dollars per annum;

(d) For each license in incorporated cities with a population of
ten thousand (10,000) or more, or within a distance of five (5)
miles thereof, measured in a straight line from the nearest entrance
of the premises to be licensed to the nearest boundary of such city,
six eight hundred dollars (\$600) (\$800) per annum;

(e) For each railway system in the state of Montana, three hundred (\$300) dollars per annum;

(f) The distance of five (5) miles from the corporate limits of any incorporated cities and incorporated towns shall be measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within five (5) miles of the corporate boundaries of two (2) or more incorporated cities or incorporated towns of different populations the license chargeable by the larger incorporated city or incorporated town shall apply and be paid by the applicant' provided, however, that when the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of said incorporated town or incorporated city be without said five (5) mile limit then the license fee chargeable by the smaller incorporated town or incorporated city shall apply and be paid by said applicant.

An applicant for the issuance of an original license to be located in areas described in subsection (d) of this section shall pay a one-time original license fee of twenty thousand dollars (\$20,000) for any such license issued. The said one-time license fee of twenty thousand dollars (\$20,000) shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, shall be subject to the annual renewal fee of six eight hundred dollars (~~\$600~~) (\$800).

The license fees herein provided for are exclusive of and in addition to other license fees chargeable in the state of Montana for the sale of liquor, beer and malt beverages.

The census taken under the direction of Congress of the United States in the year nineteen hundred and thirty, and every ten years thereafter, shall be the basis upon which the respective populations of said municipalities shall be determined, unless a direct enumeration of the inhabitants thereof be made by the state or municipal corporation, in which case such later direct enumeration shall constitute such basis, provided, however, that no census hereafter taken shall be such basis until it shall have been published under the authority under which the same shall be taken, and then its effect shall from the date of such publication be prospective only and provided, further, that none of the provisions of this act shall be deemed to operate retroactively."

1 renumber following sections to conform numerically.

AS SO AMENDED, DO PASS

March 5, 1975

HOUSE

The Business and Industry Committee meeting was called to order this date at 10:30 A.M., with Chairman Sheldon presiding. All members were present, with the exception of Rep.'s Wolfe, Sloan, Fabrega and Wood.

The following bills were before the committee for consideration:

SB 1...Senator Turnage, sponsor, explained the bill; he said it was really a simple recodification of the liquor laws, and was to amend the floating license practices.

Senator Turnage introduced William Groff, from the Department of Revenue. Mr. Groff testified regarding the necessity for the bill, and went over the amendments that were made over the present liquor laws.

Senator Regan testified regarding the bill also, as a proponent. She said the floater was the most important part of the bill, and undoubtedly would be the most controversial part of the bill.

Robert Durkee, representing the Montana Tavern Association, testified as a proponent to the bill. Mr. Durkee said the Board of the Montana Tavern Association was in complete agreement with the bill, and totally endorsed it.

Curtis Lees, testified, as being in favor of the bill with some proposed amendments; Mr. Lees said he did not agree with the quota stipulations in the bill. He asked the committee to consider amending line 25, on page 102 of SB No. 1, regarding the twenty-five percent quota, and changing that to fifteen percent. He spoke of the Billings area, and said that they couldn't possibly support that many establishments as proposed in the bill, and the allowance of that many licenses. Mr. Lees also said that Bozeman and Libby, for instance could support several more liquor establishments, but the quota did not allow those areas to have more liquor licenses.

Phil Strobe, also proposed some amendments to the bill, which were: Amend page 102, line 25; following "than", to strike "twenty-five" and to insert "fifteen" therein. To amend page 103, lines 5 through 20, to strike all of subsection (b). Mr. Strobe represented the Montana Inn Keepers Association.

Rep. Scully also proposed some amendments to this bill; He said he objected to the five mile radius portion of the bill, and said otherwise SB No. 1, was overdue a long time ago.

Senator Regan spoke regarding the floating license. She said it was necessary to have that in the bill and also spoke again of the quota, saying she did not believe twenty-five percent was too large a figure.

More discussion followed regarding the five mile radius portion of the bill. Senator Regan was asked by Rep. Williams if she would object to amending that part of the bill, and Senator Regan said she would have to take a really hard look at it first. Senator Regan, further said, that a liquor license should allow no more than the right to do business, that no other license allow more.

Rep. Scully said he agreed with Senator Regan regarding the quota system, but said he would like to amend the five mile radius limit of the bill. A copy of Rep. Scully's proposed amendments is attached.

SB 7...Senator Regan, sponsor, testified regarding the need for this bill. She said the law now clearly discriminates and there was a great need to change that. Senator Regan went over the bill explaining the amendments made to the present law regarding credit.

Senator Regan introduced Jan Gerke, who submitted written testimony which is attached hereto.

Socs Vratiss, representing the Montana Retail Association, testified on SB 7; he said he, in no way, opposed the bill, but did want one word added into the bill. Mr. Vratiss wanted the word "solely" added after the word "discriminate" on line 22 of page 10.

Senator Regan said the addition of the word "solely" in the above-mentioned paragraph, would be discriminative. She said this would completely change the whole bill, and she would rather see the bill killed than to do that.

There followed discussion regarding this matter, and Rep. Bradley said by adding the word "solely", where Mr. Vratiss proposed, it would be accumulative discrimination. Senator Regan said only three things should be important in considering credit and those were the three "C"'s-character, capacity and collateral.

Lawrence Winthrop testified as neither a proponent or an opponent but wished to have the bill amended regarding the age of a person applying for credit. His testimony is attached hereto.

The following action was taken by the committee:

SB 7...Rep. Harper moved that the bill DO PASS. A roll call vote revealed that the members voted YES, with the exception of Rep. Casey, who voted NO; Rep.'s Wolfe, Sloan, Fabrega and Wood being absent.

SB 1...Chairman Sheldon appointed a subcommittee for this bill, consisting of Rep. Williams, chairman, and Rep.'s Bradley and Ageson.

There being no further business the meeting was adjourned.

MEMBERS

L. GRAHAM
IMAN
DRAKE
HAZELBAKER
LYNCH

JOSE WEBER
JOINTIVE DIRECTOR
MELA DUENSING
ADMINISTRATIVE ASSISTANT



Montana Legislative Council

State Capitol

Helena 59601

March 5, 1975

HOUSE MEMBERS

HENRY S. COX
VICE CHAIRMAN
FRANCIS BARDANOUVE
HAROLD GERKE
ROBERT MARKS

MRS. DIANA DOWLING
DIRECTOR, LEGAL SERVICES
AND RESEARCH
MRS. ROBERTA MOODY
SUPERVISOR, ALTER SYSTEM

TO: House Committee on Business and Industry

FROM: Robert B. Person, Legislative Researcher

RE: Senate Bill No. 11

This memo summarizes the amendments made by the Senate to the bill revising the alcoholic beverage control statutes and lists concurrent bills affecting sections of Title 4.

Amendments by Senate

1. Page 7, line 13. - removed "days and" as it was felt this was adequately covered in section 7, page 11, line 21.
2. Page 7, line 13 - removed "retail establishments" because it is covered in section 46, page 41. This amendment has the effect of not allowing the department to prescribe hours of closure on retail establishments that vary from the codes.
3. Page 11, line 14 substituted "enter into an agency agreement" for "contract" to express the status quo condition more clearly. At this time, five agency-type concessions for bottle sales are operating where a full time store cannot be justified. "Agency agreement" is defined on page 118.
4. Page 56, line 16 removed "or retailer" to preserve the status quo in relationship to where a beer retailer might purchase beer for sale.
5. Page 67, line 2 through 4 struck a whole paragraph relating to common carrier license fees because it is covered in section 114, page 122, line 22.
6. Page 67, line 18 through 23 struck language relating to licenses that may be issued by cities and towns because it is covered in section 103, page 113, line 23.

7. Page 99, line 17 changed the lodge special permit type license fee from \$10 to \$20 to account for this fact that the lodge need only acquire one license instead of two under the code revision.
8. Page 102, line 7 through 11 added language to allow the department to approve a purchaser to operate a business during the license transfer process.
9. Page 103, line 6 added "may not" after the conjunction "or". The attempt to clarify this language would be more successful were "or" changed to "and".
10. Page 103, line 7 clarifies the language to indicate specifically that a license may not be transferred to "another person".
11. Page 103, line 18 through 20 provides that floater licenses may be held only by natural persons who are full participants in the ownership and operation of the business authorized by the license. A natural person is a human being. When several natural persons band together to conduct a business a collective artificial person comes into existence formed of the natural persons composing the group. Under the amendment, each person named on a license in such a group is required to be an active operator of the business.
12. Page 105, line 21 through 24 clarifies the language and removes the requirement that the department judge the financial capability of a license applicant.
13. Page 118, line 18 defines "agency agreement" as the term is used in the amendment on page 11.
14. Page 125, line 5 through 24 removes authority of the department to arrest violators of code, enter complaints before the courts, and to search and seize with the authority of peace officers. Nominal authority to search and seize by department investigator remains in sections 22, 25, 26, 27, 39, 100, and 101. As such the power of forbidding the arrest of a violator by the department investigator at the time the violation is discovered would be continued as is now the case.
15. Page 127, line 23 through line 2 on page 131 amends section 4-40 to reflect the fact that only one license need be purchased for beverages. Annual license fees are raised accordingly. Section 120, page 131, line 15 should be amended by deleting the reference to section 4-404 to correspond to this amendment.

Other Bills Still Alive That Relate to Title 4

1. HB 518 repeals section 4-120 relating to canvassing for sales of liquor or beer. Would be section 4-2-102 under section 10 of SB No. 1. Some internal renumbering should be done to the revision.

title 4.

2. SB 46 amends section 4-114 relating to days the state liquor stores shall be open when more than one is located in a community. This bill is compatible with SB No. 1.
3. SB 52 amends a number of sections relating to the drinking age. Sections 4-502 and 4-504 relating to ID cards are amended by SB 52 and repealed by SB No. 1. SB 52 amends section 4-337 related to a number of license provisions for common carriers which SB No. 1 places elsewhere. The conflicts in SB 52 are not critical, but will cause a serious problem should the bill pass subsequent to SB No. 1. The bill should be amended to include language similar to that found in section 2 of SB 46.
4. SB 164 allows a 5% discount on case lot purchases of liquor from the state stores by amending section 4-117. The amendment to 4-117 conflicts only slightly with section 9 of SB No. 1. A compatible amendment could easily be drawn.

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REASONS FOR THE PROPOSED AMENDMENTS
OF SENATE BILL NO. 1

As originally proposed by the legislative committee and the recodification of the alcoholic beverage control law, the committee recognized that in certain areas in the state of Montana, by reason of the growth of the population, it was impossible to obtain any new liquor licenses between census periods. Therefore the licenses are frozen for an entire ten (10) year period. The 1973 legislature did provide for additional licenses if a census was taken, but because of technicalities it was ineffective.

Prior to the proposed recodification, under the provisions of Section 4-403, subparagraph 1(a), R.C.M. 1947, as amended, it was provided that the number of inhabitants in a city and town, and in addition, the number of inhabitants residing within a distance of five (5) miles from the corporate limits thereof determined the number of retail liquor licenses that may be issued within the city or town and within a distance of five (5) miles from the corporate limits. However, under the provisions of the recodification, as amended, and Section 4-4-202, p. 80-82, the number of licenses in the city and town is controlling and the number of inhabitants within the five (5) mile limit shall not be permitted to be counted for the establishment of the number of licenses. Therefore, the effect of this recodification is a strict curtailment of the number

of licenses and is more restrictive in growing areas than was the law in 1973. The legislative committee initially proposed that the number of inhabitants in a city and town, and in addition the number of inhabitants within a five (5) mile limit should govern the number of retail licenses that may be issued, but the amendment deleted the words "and in addition" and inserted "exclusive of", which created the restrictive situation.

The legislative committee in 1973 contemplated changes between the census years by providing for a census to be taken by an applicant, at the applicant's own expense. An amendment to the recodification provided for a census also, but from an examination of this amendment, it is seen that it becomes a worthless gesture for the reason that before the license quota of a city and town can be increased, the population residing within five (5) miles, but outside of the corporate limits, must exceed the number of persons residing within the city. The census would have to be taken at the applicant's expense and it is a known fact that in the areas of heavy population in the state, the number of inhabitants outside the corporate limits do not exceed the number of inhabitants within the corporate limits. Therefore, no applicant would dare pay for a census, and also, the quota is still tied to the population in the city and town, regardless of an increase in the population of the five (5) mile perimeter.

For these reasons the proposed amendment to Section 4-4-202 is offered, and in essence the proposed amendment does the following things:

1. Returns to a quota system, which includes the population of a city and town, plus a five (5) mile perimeter as a basis for the quota.

2. Permits a census to be taken between census years at the expense of the applicant, and if the population has increased in sufficient numbers, additional licenses could be granted. This then would carry out the intentions of the legislature by amendments made in 1973, and would recognize the need and permit the granting of licenses in rapidly growing areas.

There would be no expense to the state for the cost of a census and if the population did not warrant, no new licenses would be granted. In like manner, this would protect the existing licenses and not make them worthless.

FLOATING LICENSES

Amendment to Section 4-4-206, subparagraph 4(b)
R.C.M. 1947, as amended

Under the recodification, the legislative committee initially contemplated permitting licenses to be transferred from an area where there was an excess of licenses to areas where there was not an excess. The original proposal of the legislative committee permitted the transfer of these licenses from area to area, and permitted them to be transferred to corporations or business entities other than natural persons. However, as amended, licenses were limited to be transferred to natural persons and prohibited the same from being pledged as security and could not be transferred at all other than through

to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the department may issue; provided that no retail license may be issued by the department for any premises situated within any zone of a city or town wherein the sale of liquor is prohibited by ordinance, a certified copy of which has been filed with the department. The department shall have discretion to deny the issuance of a retail license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

Section 4-4-206, Sub-paragraph (4), Sub-paragraph (b) is amended as follows: and sub-paragraph (c) is added for clarity.

(b) A license transferred between quota areas may not be pledged as security and when a license is transferred from one quota area to the other quota area, it may not thereafter be transferred from the place of business to which it has been transferred to.

(c) Except as prohibited in paragraph b above a license may be subject to mortgage or other valid liens in which event the name of the mortgagee or other secured party, upon application to and approval of the department, must be endorsed upon the license. All licenses shall expire at midnight of June 30th of each year.

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AMENDMENTS TO SENATE BILL NO. 1

It is moved that Senate Bill No. 1 be amended in the following particulars: Section 4-4-202, Sub-paragraph 2 is amended to read as follows:

(a) The number of all-beverage licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by Congress to-wit: In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, not more than two (2) retail licenses; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities and towns, three (3) retail licenses for the first one thousand (1000) inhabitants and one (1) retail license for each additional one thousand (1000) inhabitants; in incorporated cities of over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits thereof, five (5) retail licenses for the first three thousand (3000) inhabitants and one (1) retail license for each additional one thousand five hundred (1500) inhabitants. The number of the inhabitants in such cities and towns, and in addition the number of inhabitants residing within a distance

of five (5) miles from the corporate limits thereof, shall govern the number of retail licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, however, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles from each other, the total number of retail licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined population of both of such municipalities and shall not exceed the foregoing limitations.

Notwithstanding the above restrictions concerning quotas, it shall be permissible to have a special census taken by the department or its agent at the expense of an applicant or applicants for a license under this section, and a determination of population may be made upon the taking of said special census between the period of taking the official census authorized by the Congress of the United States. Upon the taking of said special census should it be determined that there is an increase in population growth that the last official United States census authorized by Congress the number of licenses may be increased under the provisions of population set forth above.

Retail all-beverages licenses of issue on the date of the passage and approval of this code and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided that such limitations shall not prevent the issuance of

two (2) or more incorporated municipalities situated within a distance of five (5) miles from each other, the total number of retail licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined population of both of such municipalities and shall not exceed the foregoing limitations.

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Retail all-beverages licenses of issue on the date of the passage and approval of this code and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided that such limitations shall not prevent the issuance of a nontransferable and nonassignable (as to ownership only)

retail license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the department may issue; provided that no retail license may be issued by the department for any premises situated within any zone of a city or town wherein the sale of liquor is prohibited by ordinance, a certified copy of which has been filed with the department. The department shall have discretion to deny the issuance of a retail license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

Section 4-4-206, Sub-paragraph (4), Sub-paragraph (b) is amended as follows: and sub-paragraph (c) is added for clarity.

(b) A license transferred between quota areas may not be pledged as security and when a license is transferred from one quota area to the other quota area, it may not thereafter be transferred from the place of business to which it has been transferred to.

(c) Except as prohibited in paragraph b above a license may be subject to mortgage or other valid liens in which event the name of the mortgagee or other secured party, upon application to and approval of the department, must be endorsed upon the license.

as a basis for the quota.

2. Permits a census to be taken between census years at the expense of the applicant, and if the population has increased in sufficient numbers, additional licenses could be granted. This then would carry out the intentions of the legislature by amendments made in 1973, and would recognize the need and permit the granting of licenses in rapidly growing areas.

There would be no expense to the state for the cost of a census and if the population did not warrant, no new licenses would be granted. In like manner, this would protect the existing licenses and not make them worthless.

FLOATING LICENSES

Amendment to Section 4-4-206, subparagraph 4(b)
R.C.M. 1947, as amended

Under the recodification, the legislative committee initially contemplated permitting licenses to be transferred from an area where there was an excess of licenses to areas where there was not an excess. The original proposal of the legislative committee permitted the transfer of these licenses from area to area, and permitted them to be transferred to corporations or business entities other than natural persons. However, as amended, licenses were limited to be transferred to natural persons and prohibited the same from being pledged as security and could not be transferred at all other than through inheritance.

It would appear from an examination of these amendments that no person would dare purchase one of these licenses unless he was assured that his wife or child would continue to operate the business, for the reason that he could purchase a license, transfer the same, and die the following day, and his investment would be for nothing unless his wife or child wanted to be in the alcoholic beverage business.

The amendment absolutely prohibits a corporation or partnership from holding a license and an establishment such as a million dollar hotel would never dare have an employee purchase a floating license for the reason that they would then be at the mercy of the employee, who could either quit, be dishonest or leave and immediately the license would be canceled. Therefore, only under unusual circumstances would a floating license be purchased, and again, the restrictions make the floating license provision useless. If the legislature desired to restrict the transfer of a floating license once it has been transferred from one quota area to the other, or restrict the pledging of the license as security in order to avoid trafficking in these licenses, this could be required and is set forth in the amendment. This then maintains the value of the licenses that are in existence and would insure that any person purchasing the same was interested in maintaining a proper establishment and not merely speculating on the transfer of a license from one quota area to another.

It is felt that the above amendments have a two-fold benefit.

1. The transfer of a license from one quota area to another would not increase the total number of licenses issued, and should not affect the market value of existing licenses, but;

2. It would make it possible for growing areas to obtain licenses and economically benefit areas with an excess of licenses by permitting the sale of these licenses that may be of little use in an excess area, but have been purchased at a considerable expense by a licensee.

For the above reasons we urge the adoption of these amendments to permit economic growth in the state of Montana. With the depression being caused by curtailment of mining, lumber and other industries, we must encourage our tourist growth.

March 17, 1975

The meeting of the Business and Industry Committee was called to order this date, at 10:30 A.M., with Chairman Sheldon presiding. All members were present, with the exception of Rep.'s Wolfe, Sloan, Wood and Quillici.

Chairman Sheldon announced that this was an executive session to hear the report of the subcommittee on Senate Bill No. 1, which was originally heard on March 5, 1975.

Representative Williams, who was the chairman of the subcommittee for SB 1, gave his report with the proposed amendments to this bill, a copy of which is attached hereto.

The members voted on adopting the amendments to this bill, following some discussion relative to the proposed amendments. Rep. Fabrega inquired as to the effects the passage of the three liquor bills, SB 1, HB 518 and SB 164 would have on each other, depending on the order in which they were passed.

Rep. Williams explained that the three bills were amended in coordination with one another, and that they were careful not to change anything regarding the floating quota.

Rep. Vincent inquired as to the five-mile radius limits in the bill, and Rep. Williams explained that they didn't change that at this time; he said it could always be changed at a later date. He said if you wanted to pay for a census, and could prove that your establishment was within the limits of an incorporated city, you would be able to obtain a liquor license, but that a census cost about \$4,000.

Rep. Fabrega asked about corporations, and their being able to acquire licenses under this bill, and it was explained that the bill did define "a natural person", thereby clarifying that matter.

Robert Person, from the Legislative Council, explained, further what constituted a "partnership", and that this was clarified in the bill.

Rep. Williams moved that the proposed amendments be adopted, and this motion passed unanimously. Then Rep. Williams moved that SB 1, AS SO AMENDED, BE CONCURRED IN, and this motion passed unanimously.

Rep. Fabrega stated that it was appropriate that SB 1, having to do with liquor, would be acted upon on St. Patrick's Day.

Rep. Harper, said on behalf of the entire committee, he wished to thank Chairman Sheldon for running such a good committee, and Chairman Sheldon thanked the members, and in turn said they were a good committee.

Page 2, March 17, 1975

It was determined that Rep. Yardley would carry SB No. 1 on the floor of the House.

Rep. Harper made a motion that the meeting be adjourned at the call of the chair, and this motion carried unanimously.

There being no further business, the meeting of the Business and Industry Committee adjourned, at 11:15 A.M.

Page 3, March 14, 1975

Senator Towe testified further regarding SB 315; he said that in the Havre area a huge amount of money was spent by the Power Company to counteract other utilities coming in there, and this expenditure should be reported by the Power Co-the stock-holders have a right to know.

The following action was taken by the committee:

SB 315...The committee members voted on each amendment separately. Amendment No. 1, as appears on page two of these minutes was approved, but the committee, after discussion of the proposed second amendment, decided not to adopt the second amendment that Senator Towe proposed. Rep. Casey said the reason why this bill had been noncontroversial was that it didn't have this amendment on it; Rep. Harper moved that SB 315, AS SO AMENDED, BE CONCURRED IN, and this motion passed unanimously.

SB 238...Rep. Fabrega moved that this bill BE CONCURRED IN, and this motion carried unanimously.

Chairman Sheldon asked the subcommittee on SB 1 if they had a report for the committee, and Rep. Williams said they weren't ready at this time. Chairman Sheldon said the committee would go into executive session on Monday, March 18, to act on Senate Bill No. 1.

There being no further business, the meeting was adjourned.

TO: House Committee on Business & Industry

FROM: Subcommittee on Senate Bill No. 1.

RE: Amendments to Senate Bill No. 1, and coordination with other bills relating to liquor laws.

The subcommittee proposes that the following amendments be made in Senate Bill No. 1.:

1. Amend page 10, section 7, lines 16 and 17.
Following: "maintain"
Strike: "at the county seats and such other places"
Insert: "one or more stores, to be known as 'state liquor stores,'"
2. Amend page 10, section 7, lines 17 and 18.
Following: "department"
Strike: "deems advisable, one or more stores to be known as 'state liquor stores,'"
Insert: "finds feasible"

This amendment was proposed by the Department of Revenue, which anticipates it may save the state in excess of \$20,000 in operating a state store in a county seat that has no business where an agency store can be maintained.

3. Amend page 103, section 88, subsection (4) (b), line 6.
Following: "section may not be"
Insert: "mortgaged or"

Proposed by Senator Regan to avoid any possible ambiguity in this section.

4. Amend page 103, section 88, subsection (4) (b), line 6.
Following: "security,"
Strike: "or"
Insert: "and"

This amendment clarifies the language in the amended sentence.

5. Amend page 131, section 120, lines 15 and 16.
Following: "4-4-205;"
Strike: "4-404 is renumbered 4-4-403;"

Section 4-404 is now renumbered and amended in section 119, page 127, line 23, so may be removed from section 120.

In addition to the above amendments, the subcommittee considered amendments to coordinate SB 1, with SB 164. The decision to amend SB 164 instead of SB 1 made it unnecessary to amend SB 1. A copy of the SB 164 amendments is attached for reference.

2. Amend page 10, section 7, lines 17 and 18.

Following: "department"

Strike: "deems advisable, one or more stores to be known as 'state liquor stores,'"

Insert: "finds feasible"

This amendment was proposed by the Department of Revenue, which anticipates it may save the state in excess of \$20,000 in operating a state store in a county seat that has no business where an agency store can be maintained.

3. Amend page 103, section 88, subsection (4)(b), line 6.

Following: "section may not be"

Insert: "mortgaged or"

Proposed by Senator Regan to avoid any possible ambiguity in this section.

4. Amend page 103, section 88, subsection (4)(b), line 6.

Following: "security,"

Strike: "or"

Insert: "and"

This amendment clarifies the language in the amended sentence.

5. Amend page 131, section 120, lines 15 and 16.

Following: "4-4-205;"

Strike: "4-404 is renumbered 4-4-403;"

Section 4-404 is now renumbered and amended in section 119, page 127, line 23, so may be removed from section 120.

In addition to the above amendments, the subcommittee considered amendments to coordinate SB 1, with SB 164. The decision to amend SB 164 instead of SB 1 made it unnecessary to amend SB 1. A copy of the SB 164 amendments is attached for reference.

The relationship between SB 1 and HB 518, which would repeal Section 4-170, was discussed at length. Since the Senate Committee on B & I passed HB 518 to the floor, amended to propose a change in Section 4-170, instead of repealing the section, the subcommittee has retained the renumbering reference in section 120 of the bill. A copy of Senate amendments to HB 518 is attached for reference.

caused by any single accident or injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any previous physical ailment or defect or to any injury previously suffered or any permanent disability caused thereby; provided, that no payment under this section shall be in lieu of the separate benefit of medical and hospital services *and of any benefits paid under section 92-701.1 for temporary total disability.*"

Approved April 10, 1975.

CHAPTER NO. 387

AN ACT TO RECODIFY AND GENERALLY REVISE THE ALCOHOLIC BEVERAGE CONTROL LAWS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4-101, R.C.M. 1947, is renumbered 4-1-101, and is amended to read as follows:

"4-1-101. Citation — declaration of policy — subject matters of regulation. This title may be cited as the "*Montana Alcoholic Beverage Code*". It is hereby declared to be the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale and distribution of liquor within the state of Montana as that term is defined in this code subject to the authority of the state of Montana through the Montana department of revenue.

This code is an exercise of the police power of the state, in, and for the protection, of the welfare, health, peace, morals and safety of the people of the state and their provisions shall be construed for the accomplishment of such purposes."

Section 2. Section 4-103, R.C.M. 1947, is renumbered 4-1-105, and is amended to read as follows:

"4-1-105. Divisions of code. This code is divided into six chapters. Chapter 1 relates to the authority of the department of revenue to administer this act and the powers and functions of the department. Chapter 2 relates to the establishment of state stores and the keeping and selling of liquors. Chapter 3 relates to the control of liquor, wine, and beer. Chapter 4 relates to license administration. Chapter 5 relates to identification cards. Chapter 6 relates to enforcement."

Section 3. Section 4-107, R.C.M. 1947, is renumbered 4-1-301, and is amended to read as follows:

"4-1-301. General powers and duties of the department. The department of revenue shall have the powers and duties to administer the Montana Alcoholic Beverage Code, including the general control, management and supervision of all state liquor stores."

Section 4. Section 4-109, R.C.M. 1947, is renumbered 4-1-307, and is amended to read as follows:

"4-1-307. Principal office of department of revenue. The principal office of the department of revenue shall be in the city of Helena."

Section 5. Section 4-112, R.C.M. 1947, is renumbered 4-1-302, and is amended to read as follows:

"4-1-302. Functions, powers and duties of department of revenue. The department of revenue shall have the following functions, duties and powers:

(a) To buy, import, and have in its possession for sale, and sell, liquors, in the manner set forth in this code;

(b) To control the possession, sale and delivery of liquors in accordance with the provisions of this code;

(c) To determine the municipalities within which state liquor stores shall be established throughout the state, and the situation of the stores within every such municipality;

(d) To lease, furnish and equip any building or land required for the operation of this code;

(e) To buy or lease all plant and equipment it may consider necessary and useful in carrying into effect the objects and purposes of this code;

(f) To employ store managers, and also every officer, investigator, clerk or other employee, required for the operation or carrying out of this code, and to dismiss the same, fix their salaries or remuneration, assign them their title, define their respective duties and powers, and to engage the service of experts and persons engaged in the practice of a profession, if deemed expedient;

(g) To determine the nature, form and capacity of all packages to be used for containing liquor kept or sold under this code;

(h) To grant and issue licenses under and in pursuance to this code;

(i) Without in any way limiting, or being limited by the foregoing, to do all such things as are deemed necessary or advisable by the department for the purpose of carrying into effect the provisions of this code, or the regulations made thereunder."

Section 6. Section 4-113, R.C.M. 1947, is renumbered 4-1-303, and is amended to read as follows:

"4-1-303. Regulations may be made by department of revenue — scope of regulations. (1) The department of revenue may make such regulations, not inconsistent with this code, as to the department of revenue seem necessary, for carrying out the provisions of this code, and for the efficient administration thereof.

(2) Without thereby limiting the generality of the provisions contained in subsection (1) hereof, it is declared the power of the department to make regulations in the manner set out in that subsection shall extend to and include the following:

- (a) Regulating the equipment and management of state stores and warehouses in which liquor is kept or sold and prescribing the books and records to be kept therein;
- (b) Prescribing the duties of the *employees* of the *liquor division*, and regulating their conduct while in the discharge of their duties;
- (c) Governing the purchase of liquor and the furnishing of liquor to state stores established under this *code*;
- (d) Determining the classes, varieties and brands of liquor to be kept for sale at any state store;
- (e) Prescribing, subject to this *code*, the hours during which state liquor stores shall be kept open for the sale of *alcoholic beverages*;
- (f) Providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety or brand of liquor kept for sale under this *code*;
- (g) Prescribing an official seal which shall be attached to every package of liquor sold or sealed under this *code*;
- (h) Prescribing forms to be used for the purpose of this *code* or of the regulations made thereunder, and the terms and conditions in permits and licenses issued and granted under this *code*;
- (i) Prescribing the form of records of purchase of liquor, and the reports to be made thereon to the board, and providing for inspection of the records so kept;
- (j) Prescribing the manner of giving and serving notices required by this *code* or the regulations thereunder;
- (k) Prescribing the fees payable in respect of permits and licenses issued under this *code* for which no fees are prescribed in this *code*, and prescribing the fees for anything done or permitted to be done under the regulations made thereunder;
- (l) Prescribing, subject to the provisions of this *code*, the conditions and qualifications necessary for the obtaining of a *liquor* or beer license, and the books and records to be kept and the returns to be made by the licensees and providing for the inspection of such licensed premises;
- (m) Specifying and describing the place and the manner in which liquor or beer may be lawfully kept or stored;
- (n) Specifying and regulating the time and periods when, and the manner, methods and means by which, vendors and brewers shall deliver liquor under this *code*, and the time and periods when, and the manner, methods and means by which liquor, under this *code*, may be lawfully conveyed or carried;
- (o) Governing the conduct, management and equipment of any premises licensed to sell *liquor* or beer under this *code*;
- (p) Providing for the imposition and collection of *taxes* and making

regulations respecting returns, accounting and payment to the *department of revenue* of the *taxes*.

(3) Whenever it is provided in this *code* that any act, matter or thing, may be done, if permitted or authorized by the regulations, or may be done in accordance with the regulations or as provided by the regulations, the *department of revenue*, subject to the restrictions set out in subsection (1) hereof, shall have the power to make regulations respecting such act, matter or thing."

Section 7. Section 4-114, R.C.M. 1947, is renumbered 4-2-101, and is amended to read as follows:

"4-2-101. Establishment of state liquor stores — hours — kinds and prices of liquor. The *department of revenue* shall establish and maintain *one or more stores, to be known as "state liquor stores,"* as the *department finds feasible* for the sale of liquor in accordance with the provisions of this *code* and the regulations made thereunder; the stores shall be classified according to the volume of business which each store does each fiscal year; the volume of business to be used in figuring each store's classification shall be the volume of business done by the store to be classified during the immediate past fiscal year; stores shall be classified as follows: stores having done a business of four hundred and fifty thousand dollars (\$450,000) or over during the immediate past fiscal year shall be "Class A" stores; stores having done a business of one hundred and forty thousand dollars (\$140,000) and up to four hundred and fifty thousand dollars (\$450,000) during the immediate past fiscal year shall be "Class B" stores; and all stores having done a business of less than one hundred and forty thousand dollars (\$140,000) during the immediate past fiscal year shall be "Class C" stores; in opening new stores the *department* shall estimate the volume of business which said store will do the first year and classify said store according to the estimate of business; the *department* shall *enter into an agency agreement* or employ the necessary help to operate said stores and shall designate the duties to be performed by the *agent* or employees; the *department* may, from time to time, fix the prices at which the various classes, varieties and brands of liquor may be sold, and prices shall be the same at all state stores. Such state liquor stores shall be and remain open during such period of the day as the *department* shall deem advisable, provided, however, that such stores shall be closed for the transaction of business between the close of normal business Saturday p.m. up to the opening of normal business Tuesday a.m. as set by *department* regulation and including legal holidays."

Section 8. Section 4-116, R.C.M. 1947, is renumbered 4-2-106, and is amended to read as follows:

"4-2-106. Provisions concerning sale of liquor. A *store manager* may sell to any person such liquor as that person is entitled to purchase in conformity with the provisions of this *code* and the regulations made thereunder, provided that no delivery shall take place until the purchaser has paid the purchase price."

Section 9. Section 4-117, R.C.M. 1947, is renumbered 4-2-201, and is amended to read as follows:

"4-2-201. No reduction for quantity sales of liquor. No reductions shall be made by the *department* for sales of liquor in quantity."

Section 10. Section 4-120, R.C.M. 1947, is renumbered 4-2-107, and is amended to read as follows:

"4-2-107. Liquor not to be consumed on premises of state store. No officer, clerk or servant of the *department*, employed in the state store, shall allow any liquor to be consumed on the premises of a state store, nor shall any person consume any liquor on such premises."

Section 11. Section 4-121, R.C.M. 1947, is renumbered 4-2-104, and is amended to read as follows:

"4-2-104. When sales of liquor forbidden. No sale or delivery of liquor shall be made on or from the premises of any state liquor store, nor shall any store be open for the sale of liquor

- (a) on any holiday *recognized by state law*;
- (b) during such other period and on such other days as the *department* may direct."

Section 12. Section 4-122, R.C.M. 1947, is renumbered 4-2-103, and is amended to read as follows:

"4-2-103. Conveyance of liquors — opening liquor during transit forbidden. It shall be lawful to carry or convey liquor to any state store, and to and from any warehouse or depot established by the *department* for the purposes of this *code*, and when permitted so to do by this *code* and the regulations made thereunder, and in accordance therewith, it shall be lawful for any common carrier, or other person, to carry or convey liquor sold by a vendor from a state store, or beer, when lawfully sold by a brewer, from the premises wherein such beer was manufactured, or from premises where the beer may be lawfully kept and sold, to any place to which the same may be lawfully delivered under this *code*, and the regulations made thereunder;

Provided that no such common carrier or any other person, shall open, or break, or allow to be opened or broken, any package or vessel containing liquor, or drink or use, or allow to be drunk or used, any liquor therefrom, while being so carried or conveyed."

Section 13. Section 4-139, R.C.M. 1947, is renumbered 4-1-205, and is amended to read as follows:

"4-1-205. Licensed hospital or health care facility — restrictions — violations. Any person in charge of an institution regularly conducted as a *licensed hospital or health care facility*, may administer liquor purchased by him to any patient or inmate of the institution and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to bona fide patients or inmates of the institution of which he is in charge and every person in charge of an institution who administers liquor in evasion or violation of this *code* shall be guilty of an offense against this *code*."

Section 14. Section 4-140, R.C.M. 1947, is renumbered 4-1-202, and is amended to read as follows:

"4-1-202. Application of code. (1) Nothing in this *code* shall prevent any brewer, distiller, or other person duly licensed, under the provisions of any statute of the United States of America, for the manufacture of liquor, from having or keeping liquor in a place and in the manner authorized by or under any such statute.

It is hereby declared to be the policy of the state of Montana that the manufacture of liquor including the distillation, rectification, bottling and processing as these terms are defined under the provisions of the laws of the United States shall be authorized and permitted by any brewer, distiller, rectifier or other person duly licensed under any provision of any statute of the United States of America in a place and in the manner authorized by or under any statute of the United States provided the Montana state *department of revenue* may make such regulations as the *department* deems necessary with respect thereto, not inconsistent with this *code*, or with the statutes of the United States of America or regulations issued under the provisions of the federal Alcohol Administration Act, title 27, United States Code sections 201 through 212 inclusive or regulations issued under the provisions of the Internal Revenue Code, title 26, United States Code, sections 5001 through 5693, inclusive.

(2) Nothing in this *code* shall prevent—

- (a) The sale of liquor by any person to the *department*;
- (b) The purchase, importation and sale of liquor by the *department* for the purposes of and in accordance with this *code*."

Section 15. Section 4-141, R.C.M. 1947, is renumbered 4-1-203, and is amended to read as follows:

"4-1-203. Preparations not subject to code. (1) Subject to the provisions of this section, nothing in this *code* shall, by reason only that such preparation contains alcohol, prevent the manufacture, sale, purchase or consumption—

(a) of any extract, essence or tincture or other preparation containing alcohol, which is prepared according to a formula of the United States Pharmacopoeia, or according to a formula approved of by the *department*; or

(b) of any proprietary or patent medicine prepared according to a formula approved of by the *department*.

(2) The *department*, if of opinion that any such proprietary or patent medicine, extract, essence, tincture or preparation which contains alcohol, or any other preparation of a solid, semisolid or liquid nature containing alcohol which, or any extract from which, can be used as a beverage or as the ingredient of any beverage, may prohibit the sale thereof by retail within the state, or the possession of the same for sale by retail within the state, except by a state liquor store, or by persons duly licensed by the *department* to keep and sell the same by retail in accordance with this act and the regulations made thereunder.

(3) The *department* shall notify the manufacturer or vendor of such proprietary or patent medicine, extract, essence, tincture or preparation, of the said prohibition and from and after the date of such notification any person within the state selling or keeping for sale any such proprietary or patent medicine, extract, essence, tincture or preparation so prohibited as aforesaid shall be guilty of an offense under this *code*."

Section 16. Section 4-150, R.C.M. 1947, is renumbered 4-1-201, and is amended to read as follows:

"4-1-201. Sale of liquor, possession of liquor, when unlawful. (1) Except as provided by this *code*, no person shall, within the state, by himself, his clerk, servant, or agent, expose or keep for sale, or directly or indirectly or upon any pretense, or upon any device, sell, or offer to sell, or in consideration of the purchase or transfer of any property, or for any other consideration, or at the time of the transfer of any property, give to any other person any liquor.

(2) No person shall have or keep any liquor within the state which has not been purchased from the state of Montana; provided, however, that nothing in this *code* shall prohibit any person entering this state from any other state, or from any foreign country, from having in his possession not to exceed *three (3) wine gallons* of alcoholic liquor or beer, which liquor or beer shall have been purchased in another state or foreign country but no person claiming to have so entered the state, shall at any time, have in his possession more than *three (3) wine gallons* of intoxicating liquor which shall not have been purchased from a state liquor store. This subsection shall not apply to the *department* or to the keeping or having of liquor by brewers, distillers and other persons duly licensed by the United States for the manufacture of such liquor; nor to the keeping or having of any proprietary or patent medicines or of any extracts, essences, tinctures or preparations where such having and keeping is authorized by this *code*.

(3) Nothing contained in this section shall apply to the possession by a sheriff or his bailiff of liquor seized under execution or other judicial or extra-judicial process nor to sales under executions or other judicial or extra-judicial process to the *department*, or in the case of beer to a brewer, beer licensee, club licensee or canteen licensee."

Section 17. Section 4-152, R.C.M. 1947, is renumbered 4-2-105, and is amended to read as follows:

"4-2-105. Place and time of selling liquor. No *store manager*, and no person acting as the clerk or servant of or in any capacity for any *manager*, shall sell liquor in any other place or at any other time or otherwise than as authorized by this *code* and the regulations."

Section 18. Section 4-153, R.C.M. 1947, is renumbered 4-1-304, and is amended to read as follows:

"4-1-304. Liquor division employees not to be interested in liquor sales — unlawful to give or receive gift, commission or remuneration. (1) No *officer* or employee of the *liquor division* shall be directly or indirectly interested or engaged in any other business or undertaking

dealing in liquor, whether as owner, part owner, partner, member of syndicate, shareholder, agent or employee, and whether for his own benefit or in a fiduciary capacity for some other person.

(2) No member or employee of the *division* or any employee of the state shall solicit or receive directly or indirectly any commission, remuneration or gift whatsoever from any person or corporation having sold, selling or offering liquor for sale to the state or *division* in pursuance of this *code*.

(3) No person selling or offering for sale to, or purchasing liquor from, the state *liquor division*, shall either directly or indirectly offer to pay any commission, profit or remuneration, or make any gift to any member or employee of the *division* or to any employee of the state, or to anyone on behalf of such member or employee.

(4) The prohibition contained in subsection (3) of this section does not prohibit the *division* from receiving samples of liquor for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor, or any other person, firm, or corporation proposing to sell any spirituous liquors to the Montana *liquor division* shall submit, without cost to the *division* prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding twenty-five (25) fluid ounces of such merchandise to the board.

(b) It shall be the duty of the *division*, when a brand of liquor has been accepted for testing by the *division*, to forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The *division* shall maintain written records of all samples received; such records shall show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the *division's* action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) No liquor, wine, or other spirituous beverage shall be withdrawn from the regular warehouse inventory or from the state liquor stores of the Montana *liquor division*, for any purpose whatsoever other than by sale at the prevailing state retail prices, or for destroying damaged or defective merchandise. The *division* shall maintain a written record including the type, brand, and container size; number of bottles or other units; signatures of witnesses; and method of destruction or other disposition of damaged or defective warehouse or state store merchandise."

Section 19. Section 4-154, R.C.M. 1947, is renumbered 4-6-101, and is amended to read as follows:

"4-6-101. Transfer of alcoholic beverages except as provided by code unlawful. Except as provided in this *code*, no person shall, within the state, by himself, his clerk, servant, or agent, attempt to purchase, or directly or indirectly or upon any pretense or upon any device, purchase, or in consideration of the sale or transfer of any property, or for any other consideration, or at the time of the transfer of any property, take or accept from any other person any *alcoholic beverage*."

Section 20. Section 4-156, R.C.M. 1947, is renumbered 4-6-106, and is amended to read as follows:

"4-6-106. Consumption of alcoholic beverage on druggists' premises prohibited. No person, within the state of Montana, shall consume any *alcoholic beverage* on any premises where *an alcoholic beverage* is kept for sale by a druggist, nor shall any druggist permit any *alcoholic beverage* to be consumed on such premises."

Section 21. Section 4-158, R.C.M. 1947, is renumbered 4-3-102, and is amended to read as follows:

"4-3-102. Liquor container must have been sealed with official seal. Except in the case of—

- (a) liquor imported by the state, or by the *department*; or
- (b) liquor had and kept by a person, and in a place and manner referred to in section 4-1-202; or
- (c) beer and malt liquor, lawfully had or kept under this *code*; or
- (d) any liquor kept for sale by a druggist under this *code* no liquor shall be kept or had by any person within the state unless the package, not including a decanter or other receptacle containing the liquor for immediate consumption, in which the liquor is contained has, while containing that liquor, been sealed with the official seal prescribed under this *code*."

Section 22. There is a new R.C.M. section numbered 4-6-205, that reads as follows:

4-6-205. Unlawful alcoholic beverage — seizure — forfeiture. Any investigator or peace officer who finds an alcoholic beverage, which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this code, may forthwith seize and remove the same and the packages in which the alcoholic beverage is kept, and upon conviction of the person for a violation of any provision of this section the alcoholic beverage and all packages containing the same shall, in addition to any other penalty prescribed by this code, ipso facto be forfeited to the state of Montana.

Section 23. Section 4-160, R.C.M. 1947, is renumbered 4-6-103, and is amended to read as follows:

"4-6-103. Providing alcoholic beverage prohibited. (1) No *store manager*, *retail licensee*, nor any employee of a *store manager*, or *retail licensee*, may sell any *alcoholic beverage*, or permit any *alcoholic beverage* to be sold, to any person apparently under the influence of an *alcoholic beverage*.

(2) No person may give an *alcoholic beverage* to a person apparently under the influence of *alcohol*."

Section 24. Section 4-161, R.C.M. 1947, is renumbered 4-6-104, and is amended to read as follows:

"4-6-104. Age limit for sale of alcoholic beverages. Except in the

case of an *alcoholic beverage* given to a person under the age of eighteen (18) years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply an *alcoholic beverage* to any person under the age of eighteen (18) years, or permit any person under that age to consume an *alcoholic beverage*."

Section 25. Section 4-208, R.C.M. 1947, is renumbered 4-6-203, and is amended to read as follows:

"4-6-203. Search warrants — issuance. Upon information on oath by any *investigator* appointed under this *code* or by any peace officer showing reasonable cause to believe that *alcoholic beverages* are unlawfully kept or had, or kept or had for unlawful purposes, in any building or premises, it shall be lawful for any *court* by warrant to authorize and empower the *investigator* or peace officer, or any other person named therein, to enter and search the building or premises and every part thereof; and for that purpose to break open any door, lock, or fastening of the building or premises or any part thereof, or any closet, cupboard, box, or other receptacle therein which might contain *alcoholic beverages*."

Section 26. Section 4-209, R.C.M. 1947, is renumbered 4-6-207, and is amended to read as follows:

"4-6-207. Seizure of alcoholic beverage and conveyance — forfeiture of conveyance and alcoholic beverage to state. Whenever an *investigator* or any peace officer in making or attempting to make a search under and in pursuance of authority of law, shall find in any motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance of any description an *alcoholic beverage* which is unlawfully kept or had, or kept or held for unlawful purposes contrary to the provisions of this *code*, he may forthwith seize the *alcoholic beverage* and packages in which the same is contained, and the motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance in which the *alcoholic beverage* is found; and upon the conviction of the occupant or person in charge of the vehicle, motor car, automobile, vessel, boat, canoe or conveyance, or of any other person, for having or keeping such *alcoholic beverages* contrary to any of the provisions of this *code* in any such vehicle, motor car, automobile, vessel, boat, canoe or conveyance, the court in which the conviction of any such person is had may, in addition to the sentence imposed under authority of law, declare the *alcoholic beverage* or any part thereof so seized, and the package in which the same is contained, to be forfeited to the state of Montana; and the court may in and by decree, further declare the vehicle, motor car, automobile, vessel, boat, canoe or conveyance so seized to be forfeited to the state of Montana."

Section 27. Section 4-210, R.C.M. 1947, is renumbered 4-6-208, and is amended to read as follows:

"4-6-208. Force may be used in seizure of alcoholic beverages, when — retention of seized alcoholic beverage — forfeiture — hearing. (1) Where *alcoholic beverage* is found by any *investigator* or peace officer on any premises or in any place in such quantities as to satisfy

the investigator or peace officer that such *alcoholic beverage* is being had or kept contrary to any of the provisions of this *code*, it shall be lawful for the investigator or peace officer to forthwith seize and remove, by force if necessary, any *alcoholic beverage* so found, and the packages in which the *alcoholic beverage* was had or kept and immediately turn said *alcoholic beverage* over to the Montana department of revenue.

(2) The Montana department of revenue shall commence an action in the district court of the county in which the *alcoholic beverage* is found and seized against said *alcoholic beverage* and the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure. The *alcoholic beverage* shall be named as one of the defendants to said action.

(3) The complaint shall show the date and place of seizure, the name of the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure, the reasons the Montana department of revenue claims the right to the possession of the *alcoholic beverage* and shall demand that all persons who claim any right to the possession of the *alcoholic beverage* shall show the nature of their claim or claims and that the court declare the *alcoholic beverage* contraband and that the court order *alcoholic beverage* be forfeited to the state of Montana.

(4) Summons shall be issued, served or published as in other civil actions provided by Title 93, except that the summons shall be published in the county where the *alcoholic beverage* was seized if a newspaper is published in said county.

(5) In all actions brought under this *code*, proof of the absence of the official seal of the Montana department of revenue upon the bottle, jug, package, container or containers of an *alcoholic beverage* on which a seal is required shall be prima facie evidence that the *alcoholic beverage* is contraband liquor and prima facie evidence of unlawful possession thereof in the defendants and each of them and in all other persons excepting the Montana department of revenue, and the court shall order all such *alcoholic beverage* contraband and forfeited to the state of Montana."

Section 28. Section 4-211, R.C.M. 1947, is renumbered 4-6-209, and is amended to read as follows:

"4-6-209. Disposal of forfeited alcoholic beverage — report by officers of seizure. (1) In every case in which a court makes any order for the forfeiture of *alcoholic beverages* under any of the provisions of this act, and in every case in which any claimant to an *alcoholic beverage* under the provisions of section 4-6-207, fails to establish his claim and right thereto, the *alcoholic beverage* in question and the packages in which the *alcoholic beverage* is kept shall forthwith be delivered to the department. The department shall thereupon, determine the market value of all forfeited *alcoholic beverage* which is found to be suitable for sale in the state liquor stores, and the department shall pay the amount so determined to the state treasurer, after deducting therefrom the expenses necessarily incurred by the department for transporting the forfeited *alcoholic beverage* to the state liquor warehouses, and the *alcoholic beverage*

age suitable for sale shall be taken into stock by the department and sold under the provisions of this *code*. All forfeited *alcoholic beverage* which is found to be unsuitable for sale in state liquor stores shall be destroyed under competent supervision as may from time to time be directed by the department.

(2) In every case in which an *alcoholic beverage* is seized by a peace officer it shall be his duty to forthwith make or cause to be made to the department a report in writing, of the particulars of such seizure."

Section 29. Section 4-212, R.C.M. 1947, is renumbered 4-6-210, and is amended to read as follows:

"4-6-210. Inspection of carriers' records — when authorized. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this *code*, the department or any person appointed by it in writing for the purpose may inspect the freight and express books and records, and all waybills, bills of lading, receipts, and documents in the possession of any railway company, express company, or other common carrier doing business within the state containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the state."

Section 30. Section 4-213, R.C.M. 1947, is renumbered 4-6-211, and is amended to read as follows:

"4-6-211. Unlawful for carrier to refuse inspection of records. Every railway company, express company, or common carrier, and every officer or employee of any such company or common carrier, who neglects or refuses to produce and submit for inspection any book, record, or document referred to in the next preceding section when requested to do so by the department or by a person so appointed by it shall be guilty of an offense against this *code*."

Section 31. Section 4-214, R.C.M. 1947, is renumbered 4-6-303, and is amended to read as follows:

"4-6-303. Description of offense — sufficiency of. In describing the offense respecting the sale or keeping for sale or other disposal of *alcoholic beverages*, or the having, keeping, giving, purchasing or the consumption of *alcoholic beverages* in any information, summons, conviction, warrant, or proceeding under this *code*, it shall be sufficient to state the sale or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of *alcoholic beverages*, simply without stating the name or kind of such *alcoholic beverage* or the price thereof, or any person to whom it was sold or disposed of, or by whom it was taken or consumed, or from whom it was purchased or received, and it shall not be necessary to state the quantity of *alcoholic beverage* so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity."

Section 32. Section 4-215, R.C.M. 1947, is renumbered 4-6-304, and is amended to read as follows:

"4-6-304. Description of offense — sufficiency — defenses need

not be negated. The description of any offense under this *code*, in the words of this *code* or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this *code*, may be proved by the defendant, but need not be specified or negated in the information or complaint; but if it is so specified or negated, no proof in relation to the matter so specified nor negated shall be required on the part of the informant or complainant."

Section 33. Section 4-216, R.C.M. 1947, is renumbered 4-6-305, and is amended to read as follows:

"4-6-305. Sufficiency of evidence. In any prosecution under this *code* for the sale or keeping for sale or other disposal of *alcoholic beverages*, or the having, keeping, giving, purchasing, or consuming of *alcoholic beverages*, it shall not be necessary that any witness should depose to the precise description or quantity of the *alcoholic beverages* sold, disposed of, kept, had, given, purchased, or consumed, or the precise consideration (if any) received therefor, or to the fact of the sale or other disposal having taken place with his participation or to his own personal or certain knowledge; but conviction may be based upon circumstantial evidence reasonably tending to establish the guilt of the accused beyond a reasonable doubt."

Section 34. Section 4-217, R.C.M. 1947, is renumbered 4-6-306, and is amended to read as follows:

"4-6-306. Proof of violation — sufficiency. In proving the sale, disposal, gift, or purchase, gratuitous or otherwise, or consumption of *alcoholic beverages*, it shall not be necessary in any prosecution to show that any money actually passed or any *alcoholic beverages* was actually consumed, if the court hearing the case is satisfied that a transaction in the nature of a sale, disposal, gift, or purchase actually took place, or that any consumption of *alcoholic beverages* was about to take place; and proof of consumption or intended consumption of *alcoholic beverages* on premises on which such consumption is prohibited, by some person not authorized to consume an *alcoholic beverage* thereon, shall be evidence that such *alcoholic beverage* was sold or given to or purchased by the person consuming, or being about to consume, or carrying away the same, as against the occupant of the said premises."

Section 35. Section 4-218, R.C.M. 1947, is renumbered 4-6-307, and is amended to read as follows:

"4-6-307. Analyst's report as prima facie evidence of contents. In any prosecution under this *code*, or the regulations made thereunder, production by a police officer, policeman, constable, inspector or peace officer, of a certificate or report signed or purporting to be signed by a United States or state analyst as to the analysis or ingredients of any *alcoholic beverage* or other fluid or any preparation, compound, or substance, such certificate or report shall be prima facie evidence of the facts stated in such certificate or report and of the authority of the person giving or making the same without any proof of appointment or signature."

Section 36. Section 4-219, R.C.M. 1947, is renumbered 4-6-308 and is amended to read as follows:

"4-6-308. Presumption of intoxicating beverage arises, when. The court trying a case shall, in the absence of proof to the contrary, be at liberty to infer that the *alcoholic beverage* in question is intoxicating from the fact that a witness described it as intoxicating, or by a name which is commonly applied to an intoxicating *beverage*."

Section 37. Section 4-220, R.C.M. 1947, is renumbered 4-6-309, and is amended to read as follows:

"4-6-309. Inferences from facts of code claimed to be violation. Upon the hearing of any charge of selling or purchasing an *alcoholic beverage*, or of unlawfully having or keeping an *alcoholic beverage*, contrary to any of the provisions of this *code*, the court trying the case shall have the right to draw inferences of fact from the kind and quantity of *alcoholic beverages* found in the possession of the person accused, or in any building, premises, vehicle, motorcar, automobile, vessel, boat, canoe, conveyance, or place occupied or controlled by him, and from the frequency with which the *alcoholic beverage* is received thereat or therein or is removed therefrom, and from the circumstances under which it is kept or dealt with."

Section 38. Section 4-224, R.C.M. 1947, is renumbered 4-6-302, and is amended to read as follows:

"4-6-302. Appeals. An appeal shall lie from any conviction or order made in the prosecution of any offense against any of the provisions of this *code* and the practice and procedure on any appeal from any such conviction or order, and all proceedings thereon shall be governed by the law applicable to appeal in criminal cases."

Section 39. Section 4-225, R.C.M. 1947, is renumbered 4-6-201, and is amended to read as follows:

"4-6-201. Investigators and prosecuting officers may be employed by department of revenue. The *department of revenue* may appoint one or more *investigators* or prosecuting officers, who, under its direction, shall perform such duties as it may require, and who shall be paid such salaries, fees and expenses as the said *department of revenue* may fix."

Section 40. Section 4-226, R.C.M. 1947, is renumbered 4-1-306, and is amended to read as follows:

"4-1-306. Property and moneys acquired belong to state — expenses of administration, how paid. All property, whether real or personal, all moneys acquired, administered, possessed or received by the *department* and all profits earned in the administration of this *code*, shall be the property of the state, and all expenses, debts and liabilities incurred by the *department* in connection with the administration of this *code*, shall be paid by the *department* from the moneys received by the *department* under such administration."

Section 41. Section 4-229, R.C.M. 1947, is renumbered 4-1-406, and is amended to read as follows:

"4-1-406. Disposition of money received. All moneys received from the sale of liquor at the state liquor stores shall be deposited in the revolving fund in the state treasury to the credit of the *department of revenue*. The *department* is hereby authorized to purchase liquor from moneys deposited to its account in the revolving fund. The *department* shall transfer from its account in the revolving fund to its account in the earmarked revenue fund such moneys which are necessary to pay its administrative expense, subject to the limits imposed by legislative appropriation. No obligation created or incurred by the *department* shall ever be, or become, a debt or claim against the state of Montana, but shall be payable by the *department* solely from funds derived from the operation of state liquor stores. The *department* shall pay into the state treasury to the credit of the general fund the receipts from all taxes and licenses by it collected, and also the net proceeds from the operation of state liquor stores."

Section 42. Section 4-233, R.C.M. 1947, is renumbered 4-1-104, and is amended to read as follows:

"4-1-104. Intent and construction of code. The purpose and intent of this *code* are to prohibit transactions in liquor which take place wholly within the state of Montana except under state control as specifically provided by this *code*, and every section and provision of this *code* shall be construed accordingly. The provisions of this *code* dealing with the importation, sale and disposition of liquor within the state through the instrumentality of a *department* and otherwise provide the means by which such state control shall be made effective, and nothing in this *code* shall be construed as forbidding, affecting or regulating any transaction which is not subject to the legislative authority of the state."

Section 43. Section 4-238, R.C.M. 1947, is renumbered 4-6-401, and is amended to read as follows:

"4-6-401. Premises where liquor illegally sold public nuisance. Any room, house, building, boat, vehicle, structure or place where *alcoholic beverages* are knowingly manufactured, sold, or bartered, in violation of this *code* or section 94-8-107 and all property knowingly kept and used in maintaining the same is hereby declared to be a *public nuisance* and any person who maintains such a nuisance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500) and by imprisonment not less than thirty days, nor more than six months."

Section 44. Section 4-240, R.C.M. 1947, is renumbered 4-1-401, and is amended to read as follows:

"4-1-401. License tax on liquor — amount — distribution of proceeds. The department of revenue is hereby authorized and directed to charge, receive and collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of five percent (5%) of the retail selling price on all liquor so sold and delivered. Said tax shall be charged and collected on all liquor brought

into the state and taxed by the department of revenue. The retail selling price shall be computed by adding to the cost of said liquor the state markup as designated by the *department*. Said five percent (5%) license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The department of revenue shall retain the amount of such five percent (5%) license tax so received in a separate account. Four-fifths (4/5) of these revenues shall be distributed to the counties according to the amount of liquor purchased in each county. One-fifth (1/5) of these revenues shall be deposited in the general fund. Provided, however, in the case of purchases of liquor by a retail liquor licensee for use in his business, the department shall make such regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in section 4-1-402, R.C.M. 1947. The department of revenue shall pay quarterly to each county treasurer the proportion of the license tax due each county.

The county treasurer of each county shall retain one-fourth (1/4) of said license tax, and shall, within thirty (30) days after receipt thereof, apportion the remaining three-fourths (3/4) thereof to the treasurers of the incorporated cities and towns within his county, said apportionment to be based in each instance upon the proportion which the gross sale of liquor in such incorporated city or town bears to the gross sale of liquor in all of the incorporated cities and towns in his said county."

Section 45. Section 4-301, R.C.M. 1947, is renumbered 4-1-102, and is amended to read as follows:

"4-1-102. Declaration of policy — as to sale of beer. It is hereby declared to be the policy of the state of Montana that the manufacture, transportation, distribution, sale and possession of "beer," as that term is hereinafter defined in this *code* and which contains not more than seven per centum (7%) of alcohol by weight, shall be controlled and regulated as provided under this *code*. Beer, porter, ale, stout and malt liquors containing more than seven per centum (7%) of alcohol by weight and which are defined as "liquor" shall be subject to the regulations and controls provided for liquor.

Section 46. Section 4-303, R.C.M. 1947, is renumbered 4-3-304, and is amended to read as follows:

"4-3-304. Closing hours for licensed retail establishments. Hereafter all licensed establishments wherein *alcoholic beverages* are sold, offered for sale or given away at retail shall be closed during the following hours:

(a) On any day between two A.M. and eight A.M.; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of *alcoholic beverages*, then the sale of *alcoholic beverages* is prohibited within the limits of any such city or town during the time such sale is prohibited by this *code* and in addition thereto during the hours that it is prohibited by such ordinance. During such hours all persons except the owner and employees of such licensed establishments shall be excluded therefrom except as provided in section 4-3-305."

Section 47. Section 4-304, R.C.M. 1947, is renumbered 4-3-305, and is amended to read as follows:

"4-3-305. Sale of alcoholic beverages during closed hours forbidden — lawful business need not be closed. During the hours when the said licensed establishments where *alcoholic beverages* are sold at retail are required by this *code* to be closed, it shall be unlawful to sell, offer for sale or give away any *such alcoholic beverages*, and during such hours all persons save employees of such licensed establishments shall be excluded therefrom; provided, however, that when a licensed establishment is operated in conjunction with a hotel, restaurant, bus depot, railway terminal, or other lawful business other than that of the sale of intoxicating liquor or beer, then such other lawful business need not be closed, but only the part thereof where such beer or liquor is sold."

Section 48. Section 4-308, R.C.M. 1947, is renumbered 4-3-202, and is amended to read as follows:

"4-3-202. Beer sale by department prohibited. The sale of beer by the *department* is hereby prohibited."

Section 49. Section 4-309, R.C.M. 1947, is renumbered 4-3-201, and is amended to read as follows:

"4-3-201. Possession, manufacture or disposal of beer in other manner than prescribed unlawful. It shall be unlawful to manufacture or sell, or dispose of, or possess for the purpose of sale, beer of any kind or character of an alcoholic content greater than herein prescribed, or other than in the manner permitted by this *code*."

Section 50. Section 4-310, R.C.M. 1947, is renumbered 4-4-101, and is amended to read as follows:

"4-4-101. Applications for sale or manufacture of beer — qualifications of applicant. Any person, desiring to manufacture, *import* or sell beer under the provisions of this *code*, shall first apply to the *department* for a permit so to do and pay with such application the license fee herein prescribed; the *department* shall require of such applicant satisfactory evidence that the applicant is of good moral character and a law-abiding person. Upon being satisfied from such application, or otherwise, that such applicant is qualified as herein provided, the *department* shall issue such license to such person, which license shall be at all times prominently displayed in the place of business of such applicant. If the *department* shall find that such applicant is not qualified, no license shall be granted and such license fee shall be returned."

Section 51. Section 4-311, R.C.M. 1947, is renumbered 4-3-203, and is amended to read as follows:

"4-3-203. Brewers' monthly report — power of department to inspect books and premises. Every brewer, licensed to do business in this state, shall, on or before the fifteenth day of each month, make an exact return to the *department* of the amount of beer manufactured by him and the amount sold by him in the previous month, and of his inventory, in the manner and form as shall be prescribed by the *department*,

and the *department* shall have the right at any time to make an examination of any brewer's books and of his premises, and otherwise check the accuracy of any such return, or to check the alcoholic content of beer manufactured by him."

Section 52. Section 4-313, R.C.M. 1947, is renumbered 4-3-204, and is amended to read as follows:

"4-3-204. Sale of beer by brewers — to whom. It shall be lawful for any brewer to sell or dispose of beer manufactured by him to any *licensed wholesaler*."

Section 53. Section 4-317, R.C.M. 1947, is renumbered 4-3-206, and is amended to read as follows:

"4-3-206. Licenses of brewers — persons to whom brewers may sell beer. Any brewer duly licensed as such by the United States of America, who manufactures beer in the state of Montana, upon payment of the annual license fee imposed by section 4-4-401 and upon presenting satisfactory evidence to the *department* as required by section 4-4-101, shall be licensed by the *department* in accordance with the provisions of this *code* and such regulations as may be prescribed by the *department*, to sell and deliver:

(a) Beer to a vendor;

(b) Beer to any licensees who are entitled to purchase beer from a brewer under this act; or

(c) Beer to the public, subject to the limitations and restrictions contained in this act; or to do any one or more of such acts of sale and delivery of beer."

Section 54. Section 4-317.1, R.C.M. 1947, is renumbered 4-4-102, and is amended to read as follows:

"4-4-102. Right of brewers to maintain and operate storage depots — annual licenses. It shall be lawful for any brewer duly licensed to manufacture beer in the state of Montana, upon the payment to the *department* of an annual license fee, in addition to all other fees and taxes required to be paid by such brewer, of four hundred dollars (\$400.00) for each storage depot, to own, lease, maintain and operate, in any city or town in the state of Montana, a building for use as a storage depot, equipped with refrigeration and cooling apparatus, for receiving, handling, and storing beer therein and distributing and selling beer therefrom, as brewers are permitted to sell and distribute beer under the provisions of this *code*."

Section 55. Section 4-317.7, R.C.M. 1947, is renumbered 4-3-212, and is amended to read as follows:

"4-3-212. Agreements filed with department of revenue. An exact copy of all agreements, contracts or franchises between a brewer and a wholesaler shall be filed with the department of revenue as a public document and shall be available to any of the parties to a dispute. The department, upon the instigation of any action in a court of record, shall

file an exact certified copy of the agreement with the court for the court's consideration in determining any matter before it. Any contracts, agreements or franchises not upon record with the *department* shall not be considered by any court as having any force or effect."

Section 56. Section 4-318, R.C.M. 1947, is renumbered 4-4-103, and is amended to read as follows:

"4-4-103. Wholesalers' licenses — application for and issuance — subwarehouse — imported beer handled through warehouse or subwarehouse. Any person desiring to sell and distribute beer as a wholesaler under the provisions of this *code* shall apply to the *department* for a license to do so and tender with his application the license fee hereinafter provided for and the *department* is hereby empowered, authorized and directed to issue wholesale *licenses* to qualified applicants in accordance with the provisions of this *code*; such license shall be at all times prominently displayed in the place of business of such wholesaler.

To qualify for a wholesaler's license the applicant shall *be* a resident of Montana; provided, however, any individual or partnership which has been licensed as a beer wholesaler may, upon incorporation in accordance with the laws of the state of Montana, transfer such license to the corporation if a majority of the capital stock thereof is held by said individual or the members of said partnership; or if applicant is a foreign corporation said corporation shall *be* authorized to do business in Montana; and said applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house or warehouse for the receiving of, storage, handling and moving of beer in large and jobbing quantities for distribution and sale in original packages to other licensed wholesalers or licensed retailers. Each wholesaler shall be entitled to only one (1) wholesale license, which license shall be issued for his principal place of business in Montana; a duplicate license may be issued for one (1) subwarehouse only in Montana for each wholesale licensee, which said duplicate license shall at all times be prominently displayed at said subwarehouse.

All beer manufactured outside of the state of Montana and shipped into Montana shall be consigned to and shipped to a licensed wholesaler, and by him unloaded into his warehouse in Montana or subwarehouse in Montana; said wholesaler shall distribute said beer from such warehouse or subwarehouse; said wholesaler shall keep records at his principal place of business of all beer including the name or kind received, on hand, sold and distributed; said records may at all times be inspected by any member or representative of the *department*; any beer which has been shipped into Montana and has not been shipped to and distributed from a warehouse of a licensed wholesaler shall be seized by any peace officer or representative of the *department* and may be confiscated in the manner as provided for the confiscation of intoxicating liquor."

Section 57. Section 4-319, R.C.M. 1947, is renumbered 4-3-213, and is amended to read as follows:

"4-3-213. Monthly report of wholesaler. Every wholesaler, licensed to do business in this state, as herein provided, shall on or before the

fifteenth day of each month, make an exact return to the *department* of the amount of beer manufactured in this state, sold and delivered by him, and also of the amount of beer manufactured in places outside of the state, sold and delivered by him, during the previous month, and of his inventory in the manner and form as shall be prescribed by the *department*, and the *department* shall have the right at any time to make an examination of the said wholesaler's books and of his premises, and otherwise check the accuracy of such return or to check the alcoholic content of beer which he may have on hand."

Section 58. Section 4-320, R.C.M. 1947, is renumbered 4-6-403, and is amended to read as follows:

"4-6-403. Penalty for brewer's and wholesalers' failure to pay tax. Any tax *owed by a brewer or wholesaler under this code* not paid within the time herein provided for shall be delinquent and a penalty of five per cent (5%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid, and any *brewer or wholesaler* who fails, neglects or refuses to make the return to the *department* provided for in *sections 4-3-203 or 4-3-213*, or refuses to allow such examination as provided for in *sections 4-3-203 or 4-3-213*, or fails to make an accurate return according to the manner prescribed, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding one thousand dollars (\$1,000.00)."

Section 59. Section 4-321, R.C.M. 1947, is renumbered 4-3-214, and is amended to read as follows:

"4-3-214. To whom wholesaler may sell. It shall be lawful for any wholesaler to sell and deliver beer purchased or acquired by him to a wholesaler, retailer, or to a common carrier, holding and having a license under this act."

Section 60. Section 4-325, R.C.M. 1947, is renumbered 4-3-217, and is amended to read as follows:

"4-3-217. Penalty for brewer's failure to make returns — lien of taxes — enforcement — release. If any brewer subject to the payment of the tax provided for in section *4-1-405* or any wholesaler subject to the payment of the tax provided for in section *4-1-404*, shall fail, neglect or refuse to make any return required by *this code*, or shall fail to make payment of such tax within the time herein provided, the *department* shall, forthwith after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such return and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of such tax due the state from such delinquent brewer or wholesaler and shall add thereto a penalty of five per cent (5%) thereof for the first failure, willful neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect or refusal, which shall be in addition to the five per cent (5%) penalty hereinbefore provided for nonpayment of such tax within the time hereinbefore provided. Said tax

and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such returns should have been made and said tax paid. The *department* shall then proceed to collect such tax with penalties and interest. Upon request of the *department* it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect such tax. All taxes due from any brewer or wholesaler under the provisions of *this code*, together with all penalties and interest thereon, shall be a lien upon any and all property of such brewer or wholesaler upon the filing by the *department* of a duplicate copy of the statement so made by the *department*, or a certified copy of any return filed with the *department*, in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and may be enforced in the name of the state of Montana in the same manner as other liens are enforced by law. No action shall be maintained to enjoin the collection of such tax or any part thereof. When the amount due the state is paid in full and before the entry of foreclosure decree, the *department* shall release the said lien by filing in the office of the county clerk wherein is filed the said lien a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the *department* may release from the operation of said lien a part of said property to enable the brewer or wholesaler to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said taxes, penalty and interest, provided there remains, in the judgment of the *department*, sufficient property subject to said lien to ensure the payment of the whole of said unpaid taxes, penalty and interest."

Section 61. Section 4-326, R.C.M. 1947, is renumbered 4-3-218, and is amended to read as follows:

"4-3-218. Carriers' reports of beer transported. Every railroad and every motor carrier transporting beer manufactured out of this state from points without this state and delivering the same to points within this state shall, on or before the fifteenth day of each month, make an exact return to the *department* of the amount of such beer so transported and delivered by such railroad or motor carrier during the previous month, and shall state in such return the name and address of the consignor, the name and address of the consignee, the date of delivery, and the amount delivered."

Section 62. Section 4-327, R.C.M. 1947, is renumbered 4-4-104, and is amended to read as follows:

"4-4-104. Retailers' license — application and issuance — display required — check of alcoholic content by department. Any person desiring to possess and have for sale beer, under the provisions of this *code*, for the purpose of selling it at retail, shall first apply to the *department* for a permit so to do and tender with such application the license fee herein provided for. Upon being satisfied from such application or otherwise that the applicant is qualified as herein provided, the *department* shall issue a license to such person, which license shall at all times be prominently displayed in the place of business of the applicant. If the *department* shall find that the applicant is not qualified, no license shall

be granted and the license fee tendered shall be by the *department* returned. The *department* shall have the right and is hereby given authority to make, at any time, an examination of the books of account of any such retailer and of his premises and otherwise check his methods of conducting business and the alcoholic contents of the beer kept by him for sale. *A person may not sell beer at retail without a valid license issued under this code.*"

Section 63. Section 4-328, R.C.M. 1947, is renumbered 4-3-302, and is amended to read as follows:

"4-3-302. Sale of beer by retailer — consumption on premises. It shall be lawful for such retailer to sell and serve beer either on draught or in *containers* to the public to be consumed on the premises of such retailer."

Section 64. Section 4-330, R.C.M. 1947, is renumbered 4-3-301, and is amended to read as follows:

"4-3-301. Purchase of beer by retailer — persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers. It shall be unlawful for a *licensed* retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this *code*.

It shall be unlawful for any brewer, wholesaler or retailer, his or her employee or employees to sell, deliver or give away, or cause or permit to be sold, delivered or given away, any beer to:

1. Any person under the age of eighteen (18) years;
2. Any intoxicated person or any person actually, apparently or obviously intoxicated."

Section 65. Section 4-332, R.C.M. 1947, is renumbered 4-4-105, and is amended to read as follows:

"4-4-105. Special permits to sell beer — application and issuance — fee. (1) Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event, shall in the discretion of the liquor division be entitled to a special permit to sell beer to the patrons of such event to be consumed within the enclosure wherein the event is held.

The application of any such association or corporation *shall be presented ten (10) days in advance* and shall describe the location of such enclosure wherein such event is held, the nature of such event, the period when it is contemplated that the same will be held. Such application shall be accompanied by the amount of the permit fee hereinafter provided.

The permit issued to such association or corporation shall be a special permit, but shall not authorize the sale of beer except starting one (1) day in advance of the regular period when events are being held upon such grounds and during the period described in such application, and for one (1) day thereafter.

The permit fee shall be at the rate of fifteen dollars (\$15) per day for

each day beer is sold, or to be sold at those events lasting two (2) or more days, but in no event less than thirty dollars (\$30), hereby fixed as the minimum fee for such permit.

(2) Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this *code*, shall in the discretion of the *department*, without notice or hearing as provided in section 4-4-302, be entitled to a special permit to sell beer at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of ten dollars (\$10).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the *department* shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year."

Section 66. Section 4-333, R.C.M. 1947, is renumbered 4-4-201, and is amended to read as follows:

"4-4-201. Issuance of retail beer licenses — limit on number of beer licenses — wine license amendments — retail license fee. (1) Except as otherwise provided by law, a license to sell beer at retail, or beer and wine at retail pursuant to subsection (2), in accordance with the provisions of this act and the regulations of the department of revenue, may be issued to any person, firm or corporation who shall be approved by the *department* as a fit and proper person, firm or corporation to sell beer; provided, that:

(a) the number of retail beer licenses that the *department* may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by Congress, to wit: In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, not more than one (1) retail beer license which shall not be used in conjunction with a retail liquor license; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities or towns, one (1) beer license for each five hundred (500) inhabitants which said beer license shall not be used in conjunction with retail liquor licenses; in incorporated cities of over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities, two (2) additional retail beer licenses for the first two thousand (2000) inhabitants or major fraction thereof and one (1) additional retail beer license for each additional two thousand (2000) inhabitants which shall not be used in conjunction with retail liquor licenses. The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a dis-

tance of five (5) miles from the corporate limits thereof, shall govern the number of retail beer licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles from each other, the total number of retail beer licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined populations of both of such municipalities and shall not exceed the foregoing limitations. The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail beer licenses of issue on the date of the passage and approval of this act and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided, that such limitations shall not prevent the issuance of a nontransferable and nonassignable retail beer license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the *department* may issue; provided that no retail beer license may be issued by the *department* for any premises situated within any zone of such city or town wherein the sale of beer is prohibited by ordinance, a certified copy of which has been filed with the *department*. The *department* shall have discretion to deny the issuance of a retail beer license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(b) The number of retail beer licenses that the *department* may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of five (5) miles from the corporate limits thereof, or for use at premises situated within any unincorporated town shall be as determined by the *department* in the exercise of its sound discretion; provided, that no retail beer license shall be issued for any premises so situated unless the *department* shall determine that the issuance of such license is required by public convenience and necessity.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The *division* may issue such amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared food business. A person holding a beer-and-wine license may sell wine for consumption on the premises. He may buy wine only at retail from the department. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

(3) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer only license shall be two hundred dollars (\$200).

(4) *A retail license to sell beer in the original packages for off-premise consumption only may be issued to any person, firm or corporation who shall be approved by the department as a fit and proper person, firm or corporation to sell beer and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue shall not be limited by the provisions of subsection (1) of this section, but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause. The annual license fee for a license to sell beer at retail for off-premises consumption shall be the same as for a retail beer license.*

Section 67. Section 4-338, R.C.M. 1947, is renumbered 4-3-104, and is amended to read as follows:

"4-3-104. Purchase of beer must be from licensed brewer, wholesaler or retailer. It shall be unlawful for the operator of any common carrier, or its employees, to make sale of or dispose of any beer or malt liquors except such as shall have been lawfully acquired or purchased from a brewer or wholesaler duly licensed."

Section 68. Section 4-341, R.C.M. 1947, is renumbered 4-4-401, and is amended to read as follows:

"4-4-401. Fees for licenses — expiration dates — regulation by cities and towns. Each licensee, under the provisions of this code, shall pay an annual license fee as follows:

Each "brewer," wherever located, whose product is sold or offered for sale within the state, five hundred dollars (\$500);

Each "wholesaler" four hundred dollars (\$400);

Each "retailer" two hundred dollars (\$200);

Any unit of a nationally chartered veterans' organization fifty dollars (\$50);

All licenses issued in any year shall expire on the 30th day of June at midnight of such year. A transfer of any such license may be made on application to the Montana department of revenue with the consent of the said department provided that said transferee shall qualify under this code. The cities and incorporated towns may enact ordinances defining certain areas in said cities or towns where beer may or may not be sold providing that said ordinance does not affect the limit of retail beer licenses which shall be issued by the Montana department of revenue based upon the population of the city or town and said city or town shall file a certified copy of said ordinance with the Montana department of revenue. This code shall not be construed or interpreted so as to repeal, amend, modify, change, or alter any provisions of this code which require beer manufactured outside of the state of Montana and shipped into Montana to be consigned to and shipped to a licensed wholesaler and by him unloaded into his warehouse or subwarehouse in Montana."

Section 69. Section 4-342, R.C.M. 1947, is renumbered as section 4-4-402, and is amended to read as follows:

"4-4-402. Denial of application for license or renewal — suspension or revocation — actions. The department may (1) upon its own motion and shall (2) upon a written, verified complaint of any person, investigate the action and operation of any brewer, wholesaler or retailer licensed under this code. If the department, after investigation, shall have reasonable cause to believe that any such licensee has violated any of the provisions of this code, or any rules, or regulations of the department, it may, in its discretion, and in addition to the other penalties herein prescribed, reprimand a licensee, proceed to revoke the license of any such licensee, or it may suspend the same for a period of not to exceed three (3) months, or it may refuse to grant a renewal of said license upon the expiration thereof or impose a civil penalty not to exceed one thousand five hundred dollars (\$1500), subject to the opportunity for a hearing under the Montana Administrative Procedure Act."

Section 70. Section 4-344, R.C.M. 1947, is renumbered 4-6-301, and is amended to read as follows:

"4-6-301. Jurisdiction of courts. As to misdemeanor actions, the district courts of this state shall have concurrent jurisdiction with justice of the peace courts in all prosecutions under this code."

Section 71. Section 4-346, R.C.M. 1947, is renumbered 4-6-402, and is amended to read as follows:

"4-6-402. Action to enjoin nuisance — injunction — order of court — bond. An action to enjoin any nuisance defined in this code may be brought in the name of the state of Montana by the attorney general of the state or by any county attorney. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear by affidavits or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the fixtures or other things used in connection with the violation of this act constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no liquor or beer shall be manufactured, sold, or bartered in such room, house, building, boat, vehicle, structure, or place, or any part thereof. And upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for one (1) year thereafter; but the court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal and liquidated sum of not less than five hundred

dollars (\$500), nor more than one thousand dollars (\$1,000), payable to the state of Montana, and conditioned that *liquor or beer* will not thereafter be manufactured, sold or bartered therein or thereon, and that he will pay all fines, costs, and damages that may be assessed for any violations of this *code* upon said property."

Section 72. Section 4-347, R.C.M. 1947, is renumbered 4-1-407, and is amended to read as follows:

"4-1-407. Revenue to be paid to state treasurer — disposition of revenue. Except as provided in section 4-1-408 of this *code*, all fees, charges, taxes and revenues collected by or under authority of the Montana *department*, shall be paid over to the state treasurer on or before the tenth (10th) day of each and every month who shall deposit said funds to the credit of the state general fund."

Section 73. Section 4-347.1, R.C.M. 1947, is renumbered 4-1-408, and is amended to read as follows:

"4-1-408. Revenue allocation. All revenue received from taxes on beer under sections 4-1-404 and 4-1-405, R.C.M. 1947, over and above one dollar and fifty cents (\$1.50) per barrel of thirty-one (31) gallons shall be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the earmarked revenue fund. The state treasurer shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census. For cities and towns incorporated after the latest official federal census, the census shall be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it shall cease to receive any funds under this section and the amount previously distributed to the city or town shall be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section shall be expended for state purposes such as law enforcement, maintenance of the transportation system, and public health."

Section 74. Section 4-349, R.C.M. 1947, is renumbered 4-3-219, and is amended to read as follows:

"4-3-219. Brewers and wholesalers not to supply fixtures, etc., to retailers, except as specified. (a) It shall be unlawful for any brewer or wholesaler to lease, furnish, give or pay for any premises, furniture, fixtures, equipment, signs, or any other advertising matter or any other property to any retail licensee, used or to be used in the dispensation of beer in and about the interior or exterior of the place of business of any licensed retailer or furnish, give or pay for any repairs, improvements, painting or decorating on or within such premises; provided, however, that it shall be lawful for a brewer or wholesaler to furnish, give or loan to a retail licensee:

1. Bottle openers, can openers and trays, with or without advertising matter thereon;

2. Advertising matter or novelties, of a value of not to exceed fifteen dollars (\$15) in any calendar year, to any one (1) retailer for display use on the interior of said retailer's place of business; and

3. Not more than two (2) illuminated or electrical signs, each of not more than six hundred thirty (630) square inches in area, which signs may bear the name, brand name, trade name, trade-mark or other designation indicating the name of the manufacturer, and the place of manufacture, of beer, for display by the retail licensee on and within the interior of his place of business, or in the windows inside the place of business of the licensed retailer, and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises, at the time of such display.

4. *Maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition."*

Section 75. There is a new R.C.M. section numbered 4-3-220, that reads as follows:

4-3-220. Financial interest in retailers prohibited. No brewer or wholesaler shall advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, for any license or tax which may be required to be paid for any retailer, and no brewer or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer, as herein defined. A brewer or wholesaler shall be deemed to have such a financial interest within the meaning of this section if (1) such brewer or wholesaler owns or holds any interest in, or a lien or mortgage against the retailer or his premises; or (2) if such brewer or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from, or to the other; (3) if any retailer holds an interest as a stockholder, or otherwise, in the business of the wholesaler.

Section 76. There is a new R.C.M. section numbered 4-3-221, that reads as follows:

4-3-221. Seven day credit limitation. No sale or delivery of beer shall be made to any retail licensee, except for cash paid within seven (7) days after the delivery thereof, and in no event shall any brewer or wholesaler extend more than seven (7) days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within seven (7) days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this code. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of both brewers, wholesalers and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the department in its discretion.

Section 77. Section 4-358, R.C.M. 1947, is renumbered 4-3-222, and is amended to read as follows:

"4-3-222. Limitations on advertising of beer. It shall be lawful to

advertise beer containing not more than *seven* per centum (7%) of alcohol by weight, as herein defined and regulated, subject to (a) the restrictions on brewers contained in section 4-3-219 of this *code*, and subject to (b) the restrictions on retailers, to wit: No retail licensee shall display, or permit to be displayed, on the exterior portion or surface of such retailer's place of business, or on the exterior portion or surface of any building of which said place of business is a part, or on any premises adjacent thereto, whether any of such premises be owned or leased by the retailer, any sign, poster or advertisement bearing the name, brand name, trade name, trade-mark or other designation indicating the manufacturer, brewer, wholesaler or place of manufacture, of any beer whatsoever."

Section 78. Section 4-401, R.C.M. 1947, is renumbered 4-1-103, and is amended to read as follows:

"4-1-103. Declaration of policy as to retail sale of liquor. It is hereby declared as the policy of the state that it is necessary to further regulate and control the sale and distribution within the state of alcoholic beverages, and to eliminate certain illegal traffic in liquor now existing, and to ensure the entire control of the sale of liquor in the Montana *department of revenue*, it is advisable and necessary, in addition to the operation of the state liquor stores now provided by law, that the said *department* be empowered and authorized to grant licenses to persons qualified under this *code*, to sell liquor purchased by them at state liquor stores at retail posted price in accordance with this *code* and under rules and regulations promulgated by the said *department*, and under its strict supervision and control, and to provide severe penalty for the sale of liquor except by and in state liquor stores and by persons licensed under this *code*. The restrictions, regulations and provisions contained in this *code* are enacted by the legislature for the protection, health, welfare and safety of the people of the state."

Section 79. Section 4-403, R.C.M. 1947, is renumbered 4-4-202, and is amended to read as follows:

"4-4-202. All-beverage license quota. (1) Except as otherwise provided by law, a license to sell liquor, *beer and wine* at retail, *an all-beverages license*, in accordance with the provisions of this *code* and the regulations of the Montana *department of revenue*, may be issued to any person who shall be approved by the *department* as a fit and proper person to sell such *beverages*; provided, that:

(a) *the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by Congress, to wit: In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, not more than two (2) retail licenses; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities and towns, three (3) retail licenses for the first one thousand (1000) inhabitants and one (1) retail*

license for each additional one thousand (1000) inhabitants; in incorporated cities of over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits thereof, five (5) retail licenses for the first three thousand (3000) inhabitants and one (1) retail license for each additional one thousand five hundred (1500) inhabitants. The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of five (5) miles from the corporate limits thereof, shall govern the number of retail licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, however, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles from each other, the total number of retail licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined population of both of such municipalities and shall not exceed the foregoing limitations. Notwithstanding the preceding sentence, the total population for determining the quota of a city may include, with the city's population, the population residing outside, but within five (5) miles of the city limits in a case where the number of persons residing outside but within five (5) miles of the city exceeds the number of persons residing within the city. Such a determination may be made only upon a special census taken by the department or its agent at the expense of the applicant for a license under this section. The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail all-beverages licenses of issue on the date of the passage and approval of this code and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided that such limitations shall not prevent the issuance of a non-transferable and nonassignable (as to ownership only) retail license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the department may issue; provided that no retail license may be issued by the department for any premises situated within any zone of a city or town wherein the sale of liquor is prohibited by ordinance, a certified copy of which has been filed with the department. The department shall have discretion to deny the issuance of a retail license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(b) *the number of retail all-beverages licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of five (5) miles from the corporate limits thereof, shall be not more than one (1) license for each seven hundred fifty (750) population of the county, after excluding the population of incorporated cities and incorporated towns in such county."*

Section 80. There is a new R.C.M. section numbered 4-4-203, that reads as follows:

4-4-203. Lapse of license for nonuse. From and after February 1, 1949, any retail license issued pursuant to this code (including any retail license to sell beer for off-premises consumption), not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the department shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, resort, park hotel, tourist facility or like business, provided such licensee has secured written authority from the department to close, has licensed premises for a specified period of greater than ninety (90) days' duration, and providing further that should the department determine that such lapse was reasonable beyond the control of the licensee, then the lapse provision set out above shall not apply.

Section 81. There is a new R.C.M. section numbered 4-4-204, that reads as follows:

4-4-204. Resort licenses. It is the intent and purpose of this section to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail liquor licenses may be issued by the department under the terms and as more particularly prescribed below. In addition to the licenses as otherwise set forth in this act, the department may issue resort retail liquor licenses in a resort area.

For the purposes of this section, a resort area is defined as a recreational facility meeting the qualifications determined by the department as hereinafter provided.

The department shall determine that the area for which licenses are to be issued is a resort area, such determination to be made under and pursuant to rules and regulations to be first promulgated on or before December 31, 1975. In addition to the other requirements of this code, a resort area for the purposes of qualification for the issuance of resort retail liquor license must have a current actual valuation of resort or recreational facilities, including land and improvements thereon, of not less than five hundred thousand dollars (\$500,000), at least half of which valuation must be for a structure or structures within the resort area, and must be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in the next paragraph. The word control shall mean lands held under lease, option, or permit. Before first adopting such rules and regulations in regard to resort liquor licenses, the department shall publish a notice of the hearing to be held on said rules and regulations in a regularly published newspaper in the cities of Billings, Bozeman, Butte, Great Falls, Helena, Miles City, Kalispell and Missoula, Montana, said publication to be published in said newspapers at least once a week for four consecutive weeks, the

last of said publications being at least ten (10) but not more than thirty (30) days prior to the date set for said hearing, which shall be held in Helena, Montana, at a time and place designated by the department.

The resort area must be determined by the resort developer or landowner by a plat setting forth the resort boundaries designating the ownership of the lands within the resort area which plat must be verified by the resort developer or landowner, and filed with the department prior to the filing of any applications by individuals for licenses within the resort area. Such plat must show the location and general design of the buildings, and other improvements to be built in said area in which resort retail liquor licenses are to, or may, be located. A master plan for the development of the said area may be filed by the resort developer in satisfaction of this section.

Upon such filing the department shall forthwith schedule a public hearing to be held in Helena, Montana, to determine whether the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules and regulations of the department. At least thirty (30) days prior to the date of the hearing, the department shall publish notice thereof with a description of the location of the proposed resort area in a newspaper published in the county or counties in which the resort is located, once a week for four (4) consecutive weeks. Each resort developer or landowner shall, at the time of filing his application, pay to the department an amount sufficient to cover the costs of said publication. Persons may present statements to the department at the hearing in person or in writing in opposition or support of the plat. Within thirty (30) days of the hearing the department shall accept or reject the plat. If rejected the department must state its reasons and set forth the conditions, if any, under which the plat will be accepted and the decision of the department may be reviewed pursuant to the review procedure set forth in section 4-4-402.

Once filed with the department, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the department, which approval shall be according to public convenience and necessity.

When the department has accepted a plat and a given resort area has been determined, applications may then be filed with the department by persons for the issuance of resort retail liquor licenses within the said resort area. Each applicant must submit plans showing the location, appearance and floor plan of the premises for which application for a license is made.

If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction, or are otherwise incomplete and the time of such application, the department shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed premises have been met, setting forth such time limitations and requirements as the department may establish.

In addition to the restrictions on sale or transfer of a license as provided in section 4-4-206 herein, no resort retail liquor license may be sold or

transferred for operation at a location outside of the boundaries of the resort area.

The annual fee for resort retail liquor licenses within a given resort area shall be two thousand dollars (\$2,000) for each such license.

A resort retail liquor license shall not be subject to the quota limitations set forth in section 4-4-202 above and a resort retail liquor license shall be issued by the department on the basis that the department has determined that such license is justified by public convenience and necessity, following a hearing as provided in section 4-4-302.

Section 82. Section 4-406, R.C.M. 1947, is renumbered 4-4-404, and is amended to read as follows:

"4-4-404. Fee for and expiration of licenses. Effective July 1, 1944, and at the same date of each year thereafter, the Montana *department of revenue* shall issue licenses for the retail sale of *alcoholic beverages* liquor on an annual basis, and at such fees as are prescribed by law, and such licenses shall expire at midnight of June 30th of the succeeding year. *The department shall notify each applicant for an original license or renewal that he should inform himself of applicable provisions of federal law which may require a permit from a federal agency.*"

Section 83. Section 4-407, R.C.M. 1947, is renumbered 4-4-301, and is amended to read as follows:

"4-4-301. Application for license — penalty for false statements. Prior to the issuance of a license as herein provided, the applicant shall file with the Montana *department of revenue* an application in writing, signed by the applicant, and containing such information and statements relative to the applicant and the premises where the *alcoholic beverage* is to be sold, as may be required by the *department*.

The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths. If any false statement is made in any part of said application, the applicant, or applicants, shall be deemed guilty of a misdemeanor and upon conviction thereof the license, if issued, shall be revoked and the applicant, or applicants, subjected to the penalties provided by law."

Section 84. Section 4-407.1, R.C.M. 1947, is renumbered 4-4-302, and is amended to read as follows:

"4-4-302. Notice of application — publication — protest. When an application has been filed with the Montana *department of revenue* for a license to sell *alcoholic beverages* at retail, or to transfer such license, the *department* shall promptly publish in a newspaper of general circulation in the city, town or county from whence such application shall come, a notice that such applicant has made application for such license, and that protests against the issuance of a license to the applicant will be heard at a time and place stated in the notice, which shall be in the city of Helena, Montana. Notice of application for a new license shall be published once a week for four (4) consecutive weeks. Notice of application for transfer of a license shall be published once a week for two (2) consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL ALL-BEVERAGES LICENSE

Notice is hereby given that on the day of, 19.., one (name of applicant) filed an application for a retail *all-beverages* license with the Montana *department of revenue*, to be used at (describe location of premises where license is to be sold), and protests, if any there be, against the issuance of such license will be heard at the hour of —M, on the day of, 19.., at the office of the Montana *department of revenue*, in Helena, Montana.

Dated

Signed
ADMINISTRATOR

No license shall be issued until on or after the date set in the notice for hearing protests. Nor shall a license under this *code* be issued if the said Montana *department of revenue* shall find from the evidence at said hearing that the welfare of the people residing in the vicinity of the place for which such license is desired will be adversely and seriously affected, or that the purposes of *this code* will not be carried out by the issuance of such license. Each applicant shall, at the time of filing his application, pay to the Montana *department of revenue*, an amount sufficient to cover the costs of publishing said notice."

Section 85. Section 4-408, R.C.M. 1947, is renumbered 4-4-303, and is amended to read as follows:

"4-4-303. Investigation of application. Upon receipt of a *completed* application for a license under this *code*, accompanied by the necessary license fee and bond, the *department of revenue* shall within thirty (30) days thereafter, cause to be made a thorough investigation of all matters pertaining thereto, and shall determine whether such applicant is qualified to receive a license and his premises are suitable for the carrying on of the business, and whether the requirements of this *code* and the rules and regulations promulgated by the *department* are met and complied with."

Section 86. Section 4-408.1, R.C.M. 1947, is renumbered 4-4-304, and is amended to read as follows:

"4-4-304. Fingerprints required of licensees. All applicants for a Montana retail *all-beverages* or beer license, including corporate officers and managers, may be required by the department of revenue, when applying for said license to have their fingerprints taken for use in determining the eligibility of the applicant for such license."

Section 87. Section 4-409.1, R.C.M. 1947, is renumbered 4-4-106, and is amended to read as follows:

"4-4-106. Special permits to sell alcoholic beverages — application and issuance — fee. Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act, shall in the discretion of the *department of revenue*, without notice or hearing as provided in section 4-4-302, be entitled to a special permit to sell *all alcoholic beverages* at

such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization, shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of *twenty* dollars (\$20).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the *department* shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year."

Section 88. Section 4-410, R.C.M. 1947, is renumbered 4-4-206, and is amended to read as follows:

"4-4-206. Contents of license — posting — privilege — transfer — expiration. (1) Every license issued under this *code* shall set forth the name of the person to whom issued, the location by street and number, or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the *department* shall deem necessary. If the licensee is a partnership or if more than one person has any interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein the business authorized under the license is conducted and such license shall be exhibited upon request to any authorized representative of the *department* or to any peace officer of the state of Montana.

(2) Any license issued under the provisions of this *code* shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license, unless sooner revoked or suspended. A license may be transferred to the executor or administrator of the estate of any deceased licensee when such estate consists in whole or in part of the business of selling liquor under a license and in such event the license may descend or be disposed of with the business to which it is applicable under appropriate probate proceedings.

(3) In the event of a major loss or damage to licensed premises by unforeseen natural causes, or in case of expiration of lease of the licensed premises, or in the event of eviction or increase of rent by the landlord, in case of rented, licensed premises, or in case of proposed removal of license to premises as substantially suited for the retail liquor business as the premises vacated, the licensee may apply to the *department* for a transfer of the license to a different premises, the *department* may in its discretion permit a transfer in such cases if it appears to the *department* that such a transfer is required to do justice to the licensee applying for the transfer. The *department* shall in no event, nor for any cause, permit a transfer to a different premises where the sanitary, health and service facilities are less satisfactory than such facilities which exist or had existed at the premises from which the transfer is proposed to be made.

(4) Upon a bona fide sale of the business operated under any license the license may be transferred to a qualified purchaser. No transfer of

any license as to person or location shall be effective unless and until approved by the *department* and any licensee or transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license prior to the approval of such transfer by the *department*, endorsed upon the license in writing, shall be considered as operating without a license and the license affected may be revoked or suspended by the *department*; however, the *department* may, within its discretion permit a qualified purchaser to operate the business to be transferred pending final approval, providing the application for transfer has been filed with the *department*.

(a) A license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least twenty-five percent (25%) in the most recent census; and

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred did not exceed that area's quota by more than twenty-five percent (25%) in the most recent census; and

(iii) the *department* finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license transferred between quota areas under this section may not be mortgaged or pledged as security, and may not be transferred to another person, except for a transfer by inheritance upon the death of the licensee. A license transferred between quota areas under this section may be held only by natural persons. For the purpose of this section, natural persons shall not include limited partnerships or other business entities of any kind in which each natural person is not a full participant in the ownership and operation of the business authorized by the license.

Except as above provided, no license shall be transferred or sold, nor shall it be used for any place of business not described in the license, provided however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the *department*, must be endorsed on the license. All licenses shall expire at midnight of June thirtieth of each year."

Section 89. Section 4-411, R.C.M. 1947, is renumbered 4-4-207 and is amended to read as follows:

"4-4-207. Limit one license to person — business in name of licensee. No person shall be granted more than one *all-beverages* license in any year. No business may be carried on under any license issued under this chapter except in the name of the licensee."

Section 90. Section 4-412, R.C.M. 1947, is renumbered 4-4-108, and is amended to read as follows:

"4-4-108. License as privilege — criteria for decision on application.

A license under this code is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled. The department must find, in every case where it makes an order for the issuance of a new license or for the approval of the transfer of a license, that:

(1) *neither the applicant nor any member of his immediate family has an ownership interest in any other establishment licensed under this chapter for all-beverages sales, and without financing from or any affiliation to a manufacturer, bottler, or distributor of beer, wine or liquor;*

(2) *the applicant is a resident of the state and is qualified to vote in a state election; and*

(3) *the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments."*

Section 91. Section 4-413, R.C.M. 1947, is renumbered 4-3-306, and is amended to read as follows:

"4-3-306. Persons to whom alcoholic beverage may not be sold or given. (1) No licensee or his or her employee or employees, nor any other person, shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any *alcoholic beverage* to:

(a) Any person under the age of eighteen (18) years.

(b) Any intoxicated person or any person actually, apparently or obviously intoxicated.

(2) Any minor, or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining *an alcoholic beverage* from such licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section 94-5-610 provided, however, that nothing herein contained shall be construed as authorizing or permitting the sale of *an alcoholic beverage* to any person in violation of any federal law."

Section 92. Section 4-415, R.C.M. 1947, is renumbered 4-4-107, and is amended to read as follows:

"4-4-107. Proximity to churches and schools restricted. *A retail licensee may not extend or relocate his premises within six hundred (600) feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship, or as a school other than a commercially operated or post-secondary school. This distance shall be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises. This section is a limitation upon the department's licensing authority. However, the department may renew a license for any establishment located in violation of this section if the establishment was either located on the site before the place of worship or school opened, or located in a bona fide hotel, restaurant, or fraternal organization building at the site since January 1, 1937."*

Section 93. Section 4-416, R.C.M. 1947, is renumbered 4-2-204, and is amended to read as follows:

"4-2-204. Department to sell to licensees — posted price. The department is hereby authorized to sell through its stores all kinds of liquor, wine and cordials kept in stock to licensees licensed under this code at the posted price thereof in the store in which said liquor is sold. All sales shall be upon a cash basis. The posted price as used herein shall mean the retail price of such liquor as fixed and determined by the department of revenue and in addition thereto an excise tax as in this act provided."

Section 94. Section 4-417, R.C.M. 1947, is renumbered 4-1-403, and is amended to read as follows:

"4-1-403. Excise liquor tax — collection. The department of revenue is hereby authorized and directed to charge, receive and collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at the rate of sixteen per centum (16%) of the retail selling price on all liquor so sold and delivered. The Montana department of revenue shall retain the amount of such excise tax received in a separate account and shall deposit with the state treasurer, to the credit of the general fund, such sums so collected and received not later than the tenth (10th) day of each and every month."

Section 95. Section 4-418, R.C.M. 1947, is renumbered 4-2-205, and is amended to read as follows:

"4-2-205. Duplicate invoices of sales required. The state liquor store shall upon each and every sale of liquor to any licensee, issue a duplicate invoice of the liquor purchased as provided by the department, a copy of which shall be delivered to the licensee and one copy retained at such store. The invoice shall show the date of purchase, name of employee making the sale, the quantity of each kind of liquor purchased, the price paid therefor, the name of the licensee and the number of the license, with such other information as may be required by the department. The licensee shall keep and retain his duplicate invoice of all purchases made by him from the state liquor store, which shall at all times be subject to inspection by the duly authorized officers, agents and employees of the department."

Section 96. Section 4-419, R.C.M. 1947, is renumbered 4-6-102, and is amended to read as follows:

"4-6-102. Sale of liquor not purchased from state store forbidden — penalty. It shall be unlawful for any licensee to sell or keep for sale and/or have on his premises for any purpose whatever, any liquor except that purchased from the state liquor store, and any licensee found in possession of, or selling and keeping for sale, any liquor which was not purchased from a state liquor store, shall, upon conviction, be fined not less than five hundred dollars (\$500) nor more than fifteen hundred dollars (\$1500), or by imprisonment for not less than three (3) months nor more than one (1) year, or both such fine and imprisonment, and if the department shall be satisfied that any such liquor was knowingly sold or kept for sale within the licensed premises by such licensee, or by his agents,

servants or employees, it shall be mandatory that said *department* immediately revoke the license of said licensee."

Section 97. Section 4-420, R.C.M. 1947, is renumbered 4-4-407, and is amended to read as follows:

"4-4-407. Penalty for sale of alcoholic beverage without license. Any person, who has not been issued a license under this *code*, who shall sell or keep for sale any alcoholic *beverage*, shall be guilty of a felony and upon conviction thereof shall be fined not less than one thousand dollars (\$1000) nor more than five thousand dollars (\$5,000), or be imprisoned in the state prison for not less than one (1) nor more than five (5) years, or both such fine and imprisonment."

Section 98. Section 4-421, R.C.M. 1947, is renumbered 4-3-307, and is amended to read as follows:

"4-3-307. Sale of liquor at less than posted price forbidden. It shall be unlawful for any licensee under the provisions of this *code* to resell any liquor purchased by such licensee from a state liquor store or *the state of Montana* for a sum less than the posted price established by the said store and paid by the licensee therefor."

Section 99. Section 4-422, R.C.M. 1947, is renumbered 4-1-305, and is amended to read as follows:

"4-1-305. Employees of liquor division not to deal in liquor. No member or employee of the *liquor division of the department*, including those engaged in the sale of liquor at the various state liquor stores, shall be directly or indirectly engaged in dealing in liquor whether as owner, part owner, member of a syndicate, shareholder or otherwise, whether for his own benefit or in a fiduciary capacity for others."

Section 100. Section 4-423, R.C.M. 1947, is renumbered 4-6-206, and is amended to read as follows:

"4-6-206. Officers may seize illicit alcoholic beverages — forfeiture. Any sheriff, police officer, or *investigator* appointed under this *code*, who shall find any alcoholic *beverage* kept or held by any person for sale or other disposition in violation of this *code*, may forthwith seize and remove the same, and keep the same as evidence, and upon conviction of a person for violation of the provisions hereof, the *alcoholic beverage* and all packages containing the same shall be forfeited to the state of Montana, and in addition the person so violating the law shall be subject to the penalties herein prescribed."

Section 101. Section 4-428, R.C.M. 1947, is renumbered 4-6-204, and is amended to read as follows:

"4-6-204. Officers may examine premises. The *department of revenue* or any duly authorized representative thereof, or the sheriff of any county, shall have the right at any time to make an examination of the premises of a *retail* licensee as to whether the law of Montana and the rules and regulations of the *department* are being complied with, and shall also have a right to inspect cars or *aircraft* of any *common carrier* system licensed under this *code*."

Section 102. Section 4-429, R.C.M. 1947, is renumbered 4-4-405, and is amended to read as follows:

"4-4-405. Renewal of suspended licenses. After suspension or revocation of a license the *department* shall have the power to renew the same if in its discretion a proper showing therefor has been made."

Section 103. Section 4-430, R.C.M. 1947, is renumbered 4-4-406, and is amended to read as follows:

"4-4-406. City and county licenses — fees. The city council of any incorporated town or city, or the county commissioners outside of any incorporated town or city, may provide for the issuance of licenses to persons to whom a *retail* license has been issued under the provisions of this *code*, and may fix license fees thereof, not to exceed a sum equal to fifty per cent (50%) of the license fee collected by the *department* from such licensee under this *code*."

Section 104. Section 4-439, R.C.M. 1947, is renumbered 4-6-404, and is amended to read as follows:

"4-6-404. Penalty for violating act — revocation of license. Any person violating any of the provisions of this *code*, shall upon conviction thereof, be deemed guilty of a misdemeanor and punishable by such fine or imprisonment, or both, as provided in *section 95-2206.3, R.C.M. 1947*, except as is herein otherwise provided. If any *retail* licensee is convicted of any offense under this *code* his license shall be immediately revoked, or in the discretion of the *department* such other sanction imposed as may be authorized under *section 4-4-402*. Further, if any person under the age of eighteen (18) is convicted of an offense under this *code* he shall be subject to a one hundred dollar (\$100) fine or thirty (30) days in confinement. It shall be further mandatory under the provisions of this *code* that all licensees display in a prominent place in his premises a placard as issued by the *department* stating fully the consequences for violations by persons under the age of eighteen (18) years of the provisions of this *code*."

Any person who invites a person under the age of eighteen (18) years into a public place where an *alcoholic beverage* is sold and treats, gives or purchases an *alcoholic beverage* for such person, or permits such person in a public place where an *alcoholic beverage* is sold to treat, give or purchase liquor for him, or holds out such person to be over the age of eighteen (18) years to the owner of the establishment, or his or her employee or employees, shall be guilty of a misdemeanor."

Section 105. Section 4-440, R.C.M. 1947, is renumbered 4-1-106, and is amended to read as follows:

"4-1-106. Saving clause — scope of code. If any clause, sentence, paragraph, section or any part of this *code* shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this *code*. This *code* shall apply to the Montana *department of revenue* as now composed and existing, and to any board or commission or other entity which may hereafter succeed the *department*."

Section 106. Section 4-507, R.C.M. 1947, is renumbered 4-5-102, and is amended to read as follows:

"4-5-102. Duties of the county clerk and recorder. Upon making application to the county clerk and recorder for an identification card, the applicant must apply in person before the county clerk and recorder, who shall ascertain and receive from the applicant:

1. The true and full name of the applicant;
2. The date of birth of the applicant, provided, however, it shall be within the discretion of the officer to require proof of the date of birth with a certified copy of his or her birth certificate;
3. Place of birth of the applicant;
4. The height and weight of the applicant;
5. The color of eyes and hair of the applicant; and
6. *Two*, one and one-quarter inch (1¼") by one and one-half inch (1½") photograph of the applicant which shall bear a true resemblance to the applicant. It shall be within the discretion of the clerk and recorder to refuse a photograph which does not present a true resemblance of the applicant. *The second photograph is to be filed with the state.*"

Section 107. Section 4-508, R.C.M. 1947, is renumbered 4-5-103, and is amended to read as follows:

"4-5-103. County clerk and recorder to forward application to the Montana department of revenue for issuance of identification card. The county clerk and recorder shall forward the application, properly filled in and authenticated, to the Montana department of revenue, and that department shall prepare an identification card upon a laminating machine. The identification card shall set forth all the information contained in the application, together with the photograph, and shall be signed by the *director of the Montana department of revenue* or his designee."

Section 108. Section 4-509, R.C.M. 1947, is renumbered 4-5-104, and is amended to read as follows:

"4-5-104. Montana department of revenue to furnish application forms to county clerk and recorders. It shall be the duty of the Montana department of revenue to prepare suitable application blanks and cause the same to be distributed to the various county clerk and recorders."

Section 109. Section 4-510, R.C.M. 1947, is renumbered 4-5-105, and is amended to read as follows:

"4-5-105. Fee to be charged. The county clerk and recorders shall charge and collect a fee of one dollar and fifty cents (\$1.50) from the applicant at the time the application is prepared. *One dollar (\$1) thereof* shall be transmitted to the Montana department of revenue along with the application and shall be used to defray the cost of administering and executing the provisions of this code. Any surplus shall revert to the gen-

eral fund of the state of Montana. *The remaining fifty cents (\$.50) shall be paid into the general fund of the county to defray the county's costs in administering this program.*"

Section 110. There is a new R.C.M. section numbered 4-1-107, that reads as follows:

4-1-107. Definitions. As used in this code:

(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor as a commission merchant, rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than one-half of one percent (0.5%) of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than seven percent (7%) of alcohol by weight.

(5) "Brewer" means a person who produces malt beverages.

(6) "Department" means the Montana department of revenue.

(7) "Immediate family" means a spouse, dependent children, or dependent parents.

(8) "Industrial use" means a use described as industrial use by the Federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(9) "Liquor" means an alcoholic beverage except beer.

(10) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts, or their products, and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without other wholesome products suitable for human food consumption.

(11) "Package" means a container or receptacle used for holding an alcoholic beverage.

(12) "Proof gallon" means a U. S. gallon of liquor at sixty degrees on the Fahrenheit scale that contains fifty percent (50%) of alcohol by volume.

(13) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(14) "Residence" means a building, part of a building, or tent where a person resides, but does not include any part of a building that is not actually and exclusively used as a private residence.

(15) "Rules and regulations" means rules and regulations published by the department pursuant to this act.

(16) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(17) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling distilled spirits and wines.

(18) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana, off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer, and from which a brewer may sell or distribute beer as permitted by this code.

(19) "Warehouse" means a building or structure owned or operated by a licensed wholesaler for the receiving, storage and distribution of beer as permitted by this code.

(20) "Wine" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe, fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging and that contains not less than seven percent (7%) nor more than twenty-four percent (24%) of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine, labeled and sold as wine in accordance with federal regulations are also wine.

Section 111. There is a new R.C.M. section numbered 4-1-204, that reads as follows:

4-1-204. Health professions exemption. A physician, dentist, veterinarian or pharmacist, acting within the scope of his professional responsibility and license to practice, who prescribes, prepares, or administers alcohol or substances containing alcohol, and sells or charges a fee, does not violate the prohibitions of this title.

Section 112. There is a new R.C.M. section numbered 4-1-206, that reads as follows:

4-1-206. Local option. The electors of a county may, by approving an initiative as provided under Title 37, chapter 3, R.C.M. 1947, prohibit the sale and consumption of liquor, or of all alcoholic beverages, within the county. If such initiative is presented to the board of county commissioners, the board may not approve it but shall submit the proposal to the people under section 37-301.

Section 113. There is a new R.C.M. section numbered 4-1-405, that reads as follows:

4-1-405. In addition to the annual license tax imposed by section 4-4-401, a tax of three dollars (\$3) per barrel of thirty-one (31) gallons

is hereby levied and imposed on each and every barrel of beer sold by any duly licensed brewer who manufactures beer in the state of Montana, which said barrelage tax shall be due at the end of each month and shall be payable with the brewer's monthly return or statement required to be made to the department under the provisions of section 4-3-203.

Section 114. There is a new R.C.M. section numbered 4-4-109, that reads as follows:

4-4-109. Passenger carrier licenses. Common carriers serving Montana may serve beer and liquor to passengers in aircraft over or railroad cars in the state of Montana, upon the issuance by the department of revenue of a retail beer and liquor license for that purpose. Such licenses shall be issued on an annual basis to common carriers making application therefor, and shall be effective from July 1 of the current year to July 1 of the following year. They shall be issued upon payment by the applicant of an annual license fee in the sum of three hundred dollars (\$300); provided, that licenses shall be issued for the remainder of the fiscal year commencing July 1, 1968, upon payment of a license fee in the sum of one hundred fifty dollars (\$150).

Section 115. There is a new R.C.M. section numbered 4-4-110, that reads as follows:

4-4-110. Payment of liquor taxes by passenger carriers. Every airline or railroad operating in the state of Montana and selling liquor purchased outside this state for consumption within this state shall pay to the Montana department of revenue the excise taxes and state markup which would be applicable to such liquor if purchased from the state liquor store.

The amount of such excise taxes and state markup payable shall be determined by multiplying the following factors:

- (a) the average liquor used per departure;
- (b) the number of departures from Montana on which liquor is served;
- (c) the ratio of Montana revenue passenger miles to system revenue passenger miles; and
- (d) the applicable excise tax and state markup rates.

From said product, the carrier shall subtract the amount of excise taxes and state markup on purchases of liquor made within this state.

Section 116. There is a new R.C.M. section numbered 4-4-111, that reads as follows:

4-4-111. Other accounting methods — forms. (1) The method provided in section 4-4-110 shall be presumed to determine fairly and correctly the liquor purchased outside this state and sold for consumption within this state. Any carrier aggrieved by the application of such method may petition the department for use of some other method. Thereupon, if the department finds that the application of such method will be unjust to the carrier, it may allow the use of the method so petitioned for by the airline or may use such other method as will fairly reflect the liquor purchased outside this state and served for consumption within this state.

(2) The department shall prescribe report forms which shall be used by the carriers in reporting their sales and computing their liability for excise taxes and markup. Report forms shall be filed and payment of excise taxes and state markup shall be made on a quarterly basis. The filing of report forms and payment of excise taxes and state markup shall be made not later than the last day of the month immediately following the close of each quarterly period.

Section 117. There is a new R.C.M. section numbered 4-3-308, that reads as follows:

4-3-308. Refilling of liquor bottles prohibited. No person who sells, or offers for sale, liquor, nor the agent or employee of such person, may—

(1) place in any liquor bottle any liquor whatsoever other than those contained in such bottle at the time of stamping by the federal government; or

(2) possess any liquor bottle in which any liquor has been placed in violation of subsection (1); or

(3) by the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of stamping by the federal government; or

(4) possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of subsection (3); except that this section does not prohibit any reuse of liquor bottles which is permitted under laws or regulations of the federal government.

Section 118. Section 41-2004, R.C.M. 1947, is amended to read as follows:

"41-2004. Definition of terms. For the purposes of this act the words and phrases used herein have the following meaning:

(1) "Person" includes any establishment, firm, partnership, corporation, person or association of persons.

(2) "Restaurant" means a public eating house where food is prepared and served for human consumption on the premises.

(3) "Lessee" means one to whom a lease is made.

(4) "Bar" or "tavern" means a house where liquor or beer are sold to be drunk on the premises.

(5) "Liquor" means any *beverage so defined in the Alcoholic Beverages Code*.

(6) "Beer" means any *beverage so defined in the Alcoholic Beverages Code*.

(7) "Employee" means a person who works for wages or salary in the service of an employer.

(8) "Business" means a commercial enterprise of any kind involving the buying and selling of goods."

Section 119. Section 4-404, R.C.M. 1947, is renumbered 4-4-403, and is amended to read as follows:

"4-4-403. License fee for retail sale of liquor within and without cities and towns of designated populations — census of population. Each licensee licensed under *the quotas of section 4-4-202* shall pay an annual license fee as follows:

(a) Except as hereinafter provided, for each license outside of incorporated cities and incorporated towns, or in incorporated cities and incorporated towns with a population of less than two thousand (2,000), *four* hundred dollars *(\$400)* per annum;

(b) Except as hereinafter provided, for each license in incorporated cities with a population of more than two thousand (2,000) and less than five thousand (5,000), three hundred *(\$300.00)* dollars per annum; or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, *five* hundred dollars *(\$500)* per annum;

(c) Except as hereinafter provided, for each license in incorporated cities with a population of more than five thousand (5,000) and less than ten thousand (10,000), or within a distance of five (5) miles thereof, *measured* in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, *six* hundred fifty dollars *(\$650)* per annum;

(d) For each license in incorporated cities with a population of ten thousand (10,000) or more, or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, *eight* hundred dollars *(\$800)* per annum;

(e) For each railway system in the state of Montana, three hundred *(\$300.00)* dollars per annum;

(f) The distance of five (5) miles from the corporate limits of any incorporated cities and incorporated towns shall be measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within five (5) miles of the corporate boundaries of two (2) or more incorporated cities or incorporated towns of different populations the license chargeable by the larger incorporated city or incorporated town shall apply and be paid by the applicant; provided, however, that when the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of said incorporated town or incorporated city be without said five (5) mile limit then the license fee chargeable by the smaller incorporated town or incorporated city shall apply and be paid by said applicant.

An applicant for the issuance of an original license to be located in areas described in subsection (d) of this section shall pay a one-time original

license fee of twenty thousand dollars (\$20,000) for any such license issued. The said one-time license fee of twenty thousand dollars (\$20,000) shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, shall be subject to the annual renewal fee of *eight hundred dollars (\$800)*.

The license fees herein provided for are exclusive of and in addition to other license fees chargeable in the state of Montana for the sale of liquor, beer and malt beverages.

The census taken under the direction of Congress of the United States in the year nineteen hundred and thirty, and every ten years thereafter, shall be the basis upon which the respective populations of said municipalities shall be determined, unless a direct enumeration of the inhabitants thereof be made by the state or municipal corporation, in which case such later direct enumeration shall constitute such basis, provided, however, that no census hereafter taken shall be such basis until it shall have been published under the authority under which the same shall be taken, and then its effect shall from the date of such publication be prospective only and provided, further, that none of the provisions of this act shall be deemed to operate retroactively."

Section 120. The following sections of the Revised Codes of Montana 1947 are renumbered as follows: 4-114.1 is renumbered 4-2-202; 4-114.2 is renumbered 4-2-203; 4-119 is renumbered 4-2-102; 4-151 is renumbered 4-3-101; 4-169 is renumbered 4-3-105; 4-170 is renumbered 4-3-103; 4-172 is renumbered 4-6-105; 4-206 is renumbered 4-6-107; 4-207 is renumbered 4-6-108; 4-241 is renumbered 4-1-402; 4-315 is renumbered 4-3-205; 4-317.2 is renumbered 4-3-207; 4-317.3 is renumbered 4-3-208; 4-317.4 is renumbered 4-3-209; 4-317.5 is renumbered 4-3-210; 4-317.6 is renumbered 4-3-211; 4-322 is renumbered 4-3-215; 4-323 is renumbered 4-3-216; 4-324 is renumbered 4-1-404; 4-329 is renumbered 4-3-303; 4-403.1 is renumbered 4-4-205; 4-408.2 is renumbered 4-4-305; 4-506 is renumbered 4-5-101; 4-512 is renumbered 4-5-106.

Section 121. Sections 4-102, 4-104, 4-105, 4-106, 4-110, 4-111, 4-115, 4-118, 4-134, 4-135, 4-136, 4-137, 4-138, 4-142, 4-143, 4-144, 4-145, 4-146, 4-147, 4-148, 4-149, 4-159, 4-163, 4-167, 4-173, 4-201, 4-202, 4-203, 4-204, 4-205, 4-221, 4-222, 4-223, 4-227, 4-228, 4-230, 4-232, 4-234, 4-235, 4-236, 4-237, 4-239, 4-302, 4-305, 4-306, 4-307, 4-312, 4-314, 4-317.8, 4-337, 4-339, 4-345, 4-350, 4-351, 4-352, 4-353, 4-354, 4-355, 4-356, 4-402, 4-405, 4-409, 4-414, 4-424, 4-425, 4-431, 4-432, 4-433, 4-434, 4-435, 4-436, 4-437, 4-438, 4-441, 4-501, 4-502, 4-503, 4-504, 4-505, 4-513, and 4-514, R.C.M. 1947, are repealed.

Approved April 12, 1975.

CHAPTER NO. 388

AN ACT TO CHANGE THE TIME OF ASSESSMENT OF PROPERTY FROM THE FIRST MONDAY IN MARCH TO THE FIRST DAY OF JANUARY BY AMENDING SECTIONS 7-122, 16-4019, 53-639.1,

46-2704, 46-2804, 46-2809, 81-928, 84-406, 84-409, 84-410, 84-510, 84-3808, 84-3809, 84-4192, 84-4209, 84-4604, 84-4605, 84-4606, 84-5801, 84-6012, 84-6013, 89-1805, AND 89-1806, R.C.M. 1947, AND CHANGING THE TIME FOR WITHDRAWAL FROM A PUBLIC HOSPITAL DISTRICT AND FOR CHANGING BOUNDARIES OF AN ELEMENTARY SCHOOL DISTRICT TO COINCIDE WITH THE JANUARY 1 ASSESSMENT DATE BY AMENDING SECTIONS 16-4311 AND 75-6505, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-122, R.C.M. 1947, is amended to read as follows:

"7-122. Taxation of associations. Every association shall be assessed for and pay taxes upon all real and personal property owned by such association, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained by deducting from the amount of bonds, notes and other evidences of indebtedness, including evidences of indebtedness secured by mortgage on real estate or personal property, of such associations, the amount standing to the credit of the members of any such association, upon its books, and any indebtedness representing money borrowed for use as moneyed capital. Said moneyed capital as so ascertained shall be taxed at the same rate and take the same classification as shares of stock in a national bank or moneyed capital coming into substantial competition therewith. The secretary of every such association shall furnish to the department of revenue or its agent in the county in which the principal office of such association is located, within five (5) days after demand therefor, a condensed statement verified by his oath, of the resources and liabilities of such association as disclosed by its books, at twelve o'clock noon on the first *day of January* in each year; if such secretary shall fail to make the statement hereby required, the department or its agent shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such association. The department or its agent shall thereupon make an assessment of the real estate and personal property owned by such association, and of the moneyed capital employed in the business of such association, which assessment shall be as fair and equitable as he may be able to make from the best information available, or the department or its agent may, for the purpose of said assessment, adopt the figures disclosed by any prior report made by such association to any state or federal officer pursuant to any state or federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

The amount standing to the credit of each member of any such association, upon its books, shall be considered and held as the individual credit of each member, and each member shall list the shares held by him for taxation, at their real value in money, in the county of his residence, the same as other credits are listed, except shares from which loans have been made, or money advanced, by the association, and as to such shares they shall be listed for taxation at the net cash value of the stock, to be ascer-